

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA No.3469/M/2010
Assessment Year: 2005-06**

M/s. A.V. Industries, 201, Bhagtani Krishna, "A" Wing, Dattaray Road, Santacruz (W), Mumbai – 400 054 PAN: AAFFA 1100L	Vs.	Asstt. Commissioner of Income Tax -24(3), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri K. Shivaram, A.R.
Revenue by : Shri Sanjay Singh, D.R.

Date of Hearing : 23.07.2015
Date of Pronouncement : 06.11.2015

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 25.03.2010 of the Commissioner of Income Tax [hereinafter referred to as the CIT] relevant to assessment year 2005-06, passed under section 263 of the Act whereby he has annulled the assessment made u/s 143(3) of the Act by the Assessing Officer (hereinafter referred to as the AO) and has directed the AO for denovo assessment in the case of the assessee.

2. The facts in brief are that the Ld. CIT exercising his revisional jurisdiction under section 263 called for and examined the assessment records and was of the view that the order of the AO was erroneous in so far as it was prejudicial to the interest of Revenue on the following grounds:

“(1) Purchase of tools and implements of Rs.62,44,802/-, which was in the nature of capital expenditure, was debited in the profit & loss account as revenue expenditure and same was allowed by the Assessing Officer without any verification.

(2) Assessee had claimed deprecation on dies at the rate of 40% and same was allowed by the Assessing Officer in assessment without any examination, although the depreciation allowable as per the I. T. Rules was 25%.

(3) The total depreciation allowable on motor car as per the details filed was Rs.7,53,906/- whereas the assessee’s claim of depreciation of Rs.9,42,382/- was allowed without any verification.

(4) The deduction claimed u/s.80G of the I. T. Act on account of donation was allowed by the Assessing Officer although the assessee had not filed any evidence.”

3. In view of the above, the Ld. CIT issued show cause notice dated 11.03.10 to the assessee asking him to submit an explanation as to why not the order passed by the AO be not revised/set aside as per provisions of section 263 of the Act. In compliance to the said notice, the assessee filed written submissions and explained that so far as the expenditure incurred on tools and implements was concerned, the assessee was in the business of manufacture of automobile parts made of rubber and some of the raw materials used for production of automobile parts was of revenue nature and as such the same was debited in the profit and loss account. The assessee also relied upon the decision in the case of “CIT vs. Mysore Spun Concrete Pipe (P) Ltd.” 194 ITR 159 (Kar.) and “CIT vs. Jagatjit Industries Ltd.” 241 ITR 556 (Del.). In respect of depreciation on dyes and moulds the assessee explained that the same at the rate of 40% was rightly claimed. The assessee submitted a depreciation chart in this respect. In respect of the third item i.e. depreciation allowable on motor car, the assessee submitted that depreciation had rightly been claimed at Rs.9,42,382/- and submitted the required details in this respect.

So far as the fourth issue in relation to the deduction under section 80G was concerned, the assessee submitted that he had not given any such donation. However, the assessee had given an amount of Rs.601/- towards subscription to various persons at the time of festivals etc. and the same had rightly been claimed as business expenditure. It was also submitted before him that all the required details were submitted before the AO and the AO, after duly examining the accounts and records of the assessee, has passed the assessment order.

4. The Ld. CIT, after considering the submissions made by the Ld. A.R. of the assessee, observed that the AO had not made proper verification of the claims made by the assessee in the return of income in relation to the above stated issues. He observed that on proper verification, certain claims of the assessee may be found allowable or disallowable either in part or full. But if such verification has not been made at the time of assessment, such assessment is liable to be treated as erroneous in so far as it is prejudicial to the interest of Revenue. The AO should have given a specific finding as to whether the particular claim of the assessee was allowable or disallowable. However, no such finding was given by the AO. He, therefore, concluded that the claim of the assessee has not been allowed after proper verification. He, therefore, treated the assessment made by the AO as erroneous in so far as it was prejudicial to the interest of Revenue. He accordingly set aside the assessment with a direction to do it denovo. Being aggrieved by the order of the Ld. CIT, the assessee has come in appeal before us.

5. We have heard the rival contentions and have also gone through the records. To arrive at the correct conclusion of the case, we deem it necessary to reproduce the relevant provisions of section 263 of the Act.

“Section 263(1) in The Income- Tax Act:

(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 ² Assessing] Officer is erroneous in so far 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.”

6. The sum and substance of the above reproduced section 263(1) can be summarized in the following points:

- 1) The Commissioner may call for and examine the record of any proceeding under the Act;
- 2) If he considers that the order passed by the AO is
 - (i) erroneous; and
 - (ii) is prejudicial to the interest of Revenue;
- 3) He has to give an opportunity of hearing in this respect to the assessee; and
- 4) He has to make or cause to make such enquiry as he deems necessary;
- 5) He may pass such order thereon as the circumstances of the case justify including,
 - (i) an order enhancing or,
 - (ii) modifying the assessment or
 - (iii) cancelling the assessment and directing a fresh assessment.

7. Now in the light of above words, we have to examine as to whether the order of the Ld. CIT is a valid order in the light of the above stated points/provisions of section 263 of the Act. In the case in hand, the assessee had submitted all the requisite details before the AO. It has been mentioned in the assessment order that the books of the accounts were

produced and were subjected to test check. The case was discussed with the assessee. Thereafter, the AO proceeded to make certain disallowances and assessed the income of the assessee at Rs.1,98,14,370/- against the returned income of Rs.1,95,45,368/-. The Ld. A.R. of the assessee has drawn our attention to the notice issued by the AO under section 142(1) dated 22.01.07 in relation to the scrutiny assessment proceedings under section 143(3) of the Act. We find that the AO vide letter dated 22.01.07 had called for the following details from the assessee.

- “1. Nature of Business activity
2. Details in respect of air freight, courier charges, donation, die & repairs, Insurance, electrical maintenance & repairs.
3. Details of factory maintenance and repairs, foreign agency commission, freight outward, tools and implements, machinery repairs, tour abroad etc.
4. Details in respect of business promotion.
5. Capital account of partners
6. Details of bank accounts held with account numbers and their respective balances
7. Photocopies of bills to be furnished in respect of addition to fixed assets
8. Details of expenses like telephone expenses with telephone numbers and place of installation.
9. Complete Details of sundry debtors and creditors with name, address and amount.
10. Details of other major heads of expenses.
11. Details of TDS outstanding with gross amount and date of payment in treasury.
12. Copy of bank account to be furnished with bank reconciliation statement.”

8. The assessee submitted the required details including ledger account of tools and implements and copies of bills etc. The Ld. A.R. of the assessee has further invited our attention to copies of the various other letters addressed to the AO to show that from time to time the AO called for various records which were duly submitted and the relevant

explanation was given to the AO. After duly examining the records of the assessee, the AO proceeded to pass the assessment order.

The Ld. A.R. has further invited our attention to the copy of letter dated 05.03.08 addressed to the AO, the contents of the said letter reveal that the assessee in the said letter has explained that the assessee had not claimed any special rate of depreciation on the plants and machinery purchased during the year but had claimed the same only on moulds purchased during the year and that there was no mistake or error in the order passed under section 143(3) while allowing the claim of depreciation to the assessee. The contents of the letter reveal that after the passing of the assessment order dated 26.07.07, the AO perhaps sought to amend the order as he was of the view that the excess claim of depreciation on plant machinery has been allowed to the assessee. However, the assessee explained that he had made a correct claim. Pursuant to that no rectification order under section 154 was passed by the AO. The Ld. A.R. has further invited our attention to the notice issued by the Ld. CIT in relation to the proceedings under section 263 raising the following queries:

- i) You have debited an amount of Rs.62,44,802/- under the head Tools & Implements. Since these are in the nature of capital expenditure, only the depreciation part on the said expenses could only be allowed as revenue expenditure. This amount should have been included in the block of assets under the head Plant & Machinery or Dies & Tools Equipments.
- ii) You have claimed depreciation on dies & moulds @40%. However, depreciation on dies is allowable only @25%. The assessing officer has allowed the same @40% as claimed in refund.
- iii) Depreciation on motor cars is claimed and allowed at Rs.9,42,382/-. - However, as per the provisions of law, depreciation allowable is Rs.7,53,906/- only.
- iv) Even though you have claimed deduction U/s.80-G for the

donation of Rs.601/- no valid receipt was submitted by you. Therefore, no deduction can be allowed on this payment.

- V) You have claimed depreciation on "Factory land & Building". For land, no depreciation can be allowed."

9. In response to the above stated queries, the assessee filed a detailed written reply dated 19.03.10 wherein the assessee duly explained the genuineness of the claim made and that the claim was rightly allowed by the AO. The assessee not only explained about each and every claim/query but also produced the necessary details, charts etc. justifying his claim in this respect. The Ld. CIT has also mentioned in the impugned order that the assessee had given the explanation regarding the items of claim disputed by the Ld. CIT.

10. As per the provisions of section 263 as enumerated above, after getting the explanation from the assessee, the Ld. CIT was supposed to examine the contention of the assessee. Before passing an order of modifying, enhancing or cancelling the assessment, he was supposed either to himself make or cause to make such an enquiry as he deems necessary. The words "as he deems necessary", in our view, do not mean that the Ld. CIT is left with a choice either to make or not to make an enquiry. As per the relevant provisions of section 263, it was incumbent upon the Ld. CIT to make or cause to make an enquiry. So far as the words "as he deems necessary" are concerned, the said words suggest that the enquiries which are necessary to form a view as to whether the order of the AO is erroneous and prejudicial to the interest of Revenue or not? A perusal of the above reproduced queries numbering (i) to (v) reveals that the Ld. CIT had asked the assessee about the genuineness/validity of various claims to which the assessee had given a detailed reply. Once a point wise reply was given by the assessee, then a duty

was cast upon the Ld. CIT to examine the reply of the assessee and form a prima-facie opinion as to whether the order of the AO was erroneous so far as it was prejudicial to the interest of Revenue. We further note that the Ld. CIT did not raise any query as to what enquiries were made by the AO before proceeding to pass the assessment order in question. The Ld. CIT, in fact, had made queries regarding the validity of the claim of the assessee under different heads, however, has proceeded to hold that the order of the AO is erroneous so far as its prejudicial to the interest of Revenue on the ground that the AO had not made proper enquiries in this respect. In our view, once the Ld. CIT had proceeded to make an enquiry regarding the genuineness of the claim of the assessee, he was supposed to make a prima-facie opinion which may not be a concluding opinion to hold that the order of the AO in his view was erroneous so far as it was prejudicial to the interest of Revenue. The opinion of the Commissioner that the AO had not made proper enquiries or verifications should be based on his objective satisfaction and not a substantive satisfaction from the assessment order. Merely because, the assessment order in question is not a detailed order and the AO has not mentioned item wise findings regarding the claims of the assessee, that itself, does not mean that the AO had not made enquiries in this respect. As per the relevant provisions as they stood during the relevant period i.e. for A.Y. 2005-06, whatever required by the AO was to look into the claim of the assessee. Admittedly, the AO asked the assessee to furnish the necessary details from time to time which were duly furnished by the assessee and after considering the same the AO passed the assessment order.

11. It is pertinent to mention here that a deeming fiction has been created in section 263 of the Act by the amendment made by Finance Act, 2015 w.e.f. 01.06.15 wherein it has been mentioned that where the Commissioner is of the

opinion that the AO had passed the order without making enquiries or a claim has been allowed without enquiring into the claim or that the same is not in accordance with any order or direction or instruction issued by CBDT, that shall be deemed to be erroneous in so far as its prejudicial to the interest of Revenue. The said deeming provisions, in our view, are not applicable for the assessment year under consideration.

12. In our view, when the assessee shows from the record that the necessary enquiries were made by the AO and the AO had applied his mind and the view adopted by him was one of the possible views, then it cannot be said that the order of the AO is erroneous.

13. In the case in hand, after getting the necessary details and explanation from the assessee, the Ld. CIT has not given his opinion regarding the validity or genuineness of the claims made by the assessee. He has simply opined that the AO had not made the necessary enquires. He has neither asked the assessee to show as to what enquiries were made by the AO nor himself has looked into the explanations submitted by the assessee.

14. Now coming to the various case laws relied upon by both the parties.

15. The Ld. D.R. has relied upon the following authorities to stress the point that if the Commissioner finds that there was a lack of enquiry on the part of the AO regarding the claim made by the assessee, the order can be treated as erroneous and the Commissioner exercising his powers under section 263 can direct the AO to make appropriate enquiries/verifications etc.:

- (i) CIT vs. Infosys Technologies Ltd. (2012) 17 taxmann.com 203 (Karnataka – HC).
- (ii) CIT vs. Maithan International (2015) 56 taxmann.com 283 (Calcutta)
- (iii) Malabar Industrial Co. Ltd. vs. CIT (2000) 109 Taxman 66 (SC).

- (iv) Manmohak Properties (P.) Ltd. vs. CIT (2013) 39 taxmann.com 105 (Mumbai – Trib.)

16. The Ld. A.R., on the other hand, has relied upon the following authorities to stress that there is a difference between lack of enquiries and inadequate enquiries. The Commissioner must give a finding of fact or of law that the order is erroneous so far as it is prejudicial to the interest of Revenue by making proper enquiries after seeking explanation from the assessee.

- (i) CIT vs. Sunbeam Auto Ltd. 227 CTR 133 (Delhi – HC)
- (ii) CIT vs. Vikas Polymers (2010) 194 taxman 57 (Delhi – HC)
- (iii) CIT vs. Gupta Spinning Mills Ltd. ITA No.410 OF 2003 DATED 13.09.2013
- (iv) CIT vs. Amit Corporation (2013) 213 taxman 19 (MAG) (Gujarat-HC)

17. The Ld. A.R. has further relied upon the following case laws to stress that where the AO has applied his mind and the view taken by him is one of the possible views, then the order cannot be said to be erroneous or prejudicial to the interest of Revenue, even, if the Commissioner has a different view from that of the AO; where the AO has made enquiries in respect of the claim of the assessee, order cannot be said to be erroneous even if the details of enquiries made do not find mention in the assessment order.

- (i) CIT vs. Fine Jewellery (I) Ltd. (2015) 372 ITR 303 (Mumbai-HC)
- (ii) CIT vs. Ashish Rajpal (2010) 320 ITR 674 (Delhi-HC)
- (iii) CIT vs. Sunbeam Auto Ltd. (2011) 332 ITR 167 (Delhi-HC)
- (iv) CIT vs. Gabriel India (1993) 203 ITR 108 (Bombay-HC)
- (v) Grasim Ind. Ltd. vs. CIT (2010) 321 ITR 92 (Bombay-HC)
- (vi) CIT vs. Malabar Industries (1993) 203 ITR 108 (Bombay-HC)
- (vii) Malabar Industrial Co. Ltd. vs. CIT (2000) 109 Taxman 66 (SC)
- (viii) CIT vs. Arvind Jewellers (2002) 124 taxman 615 (Guj.-HC)
- (ix) CIT vs. Vikas Polymers (2010) 194 taxman 57 (Delhi – HC)
- (x) ITO vs. DG Housing Projects Ltd. (2012) 343 ITR 329 (Delhi – HC)
- (xi) CIT vs. Goetz (I) Ltd. 2014 361 ITR 505 (Delhi – HC)

18. We have heard the rival contentions and have also gone through the the relevant case laws submitted by the Ld. Representatives of the parties. Firstly, we discuss the case laws relied upon by the Ld. D.R.

There is no doubt that the Hon'ble Karnataka High Court in the case of "Infosys Technology" (supra) has held that where the AO has not made it explicit as to the entitlement of a claim of the assessee, the Commissioner has the jurisdiction in directing the AO to make enquiries in the matter and give a specific finding in this respect. Further, in the case of "Maithan International" (supra) the Hon'ble Calcutta High Court has held that where it was established on record that credits shown by the assessee were based on loan from parties who were not possessed of sufficient means and the AO had not made sufficient enquiries regarding the creditworthiness of the parties then the Commissioner was justified in exercising his power under section 263 and directing the AO to make enquiries about the creditworthiness of the parties. In the case of "Manmohak Properties (P.) Ltd." (supra), the Mumbai Tribunal has held that the absence or lack of enquiry, or not so, is a matter of fact and where the Commissioner on an examination of the record issued definite finding of the fact which clearly exhibited that the assessee may be trading in shares and that he could not be regarded as an investor without further enquiry in the matter, bringing further material on record, the CIT was justified in exercising his jurisdiction under section 263. The Ld. D.R. has also relied upon the decision of the Hon'ble Supreme Court in the case of "Malabar Industrial Co. Ltd." (supra) which incidentally has also been relied upon the Ld. A.R. which we will discuss in the subsequent paras of this order.

19. Now coming to the case laws relied upon by the Ld. A.R.

The Hon'ble Delhi High Court in the case of "Sunbeam Auto Ltd." (supra) has held that there is a distinction between lack of enquiry and inadequate enquiry.

If there is an enquiry even inadequate that would not by itself give occasion to the CIT to pass order under section 263 merely because he has a different opinion in the matter. The AO is not required to give detailed reasoning in respect of each and every item of deduction in the assessment order. Where the AO had called for an explanation regarding the claim made by the assessee and the assessee had furnished its explanation, then it cannot be said to be a case of lack of enquiry.

In the case of “Vikas Polymers” (supra) the Hon’ble Delhi High Court has held that for exercising powers under section 263, it is pre-requisite that Commissioner must give reasons to justify exercise of revisional powers under section 263 to reopen a concluded assessment. The exercise of the power being quasi judicial in nature, the reasons must be such as to show that the enhancement or modification of the assessment or cancellation of the assessment or directions issued for a fresh assessment was called for and must irresistibly lead to the conclusion that the order of the AO was not only erroneous but was also prejudicial to the interest of the Revenue. The Hon’ble High Court has observed that the provisions of section 263 when read as a composite whole make it incumbent upon the Commissioner before exercising revisional powers to (i) call for and examine the record and (ii) give the assessee an opportunity of being heard and thereafter, to make or cause to make such an enquiry as he deems necessary. It is only on fulfillment of these twin conditions that the Commissioner may pass an order exercising powers of revision, the assessee must be called for, his explanation sought for and examination by the Commissioner and thereafter if the Commissioner still feels that the order is erroneous and prejudicial to the interest of the Revenue then he may pass the revisional orders.

The Hon’ble Bombay High Court in the case of “Gabriel India Ltd.” (supra) has held that the Commissioner cannot initiate proceedings with a view to

starting fishing and rowing enquiries in matters or orders which are already concluded. There must be material on record to show that tax which was lawfully exigible has not been imposed if the claim was allowed by the Income Tax Officer (ITO). On being satisfied with the explanation of the assessee, such decision of the ITO cannot be held to be 'erroneous' simply because in his order he did not make an elaborate discussion in that record. The Hon'ble Bombay High Court observed in the said case that when the CIT himself, even after initiating proceedings for revision and hearing the assessee, could not say that the allowance of the claim of the assessee was erroneous,.....he simply asked the AO to reexamine the matter; that was not permissible. Almost similar proposition has been laid down in the case of "Gupta Spinning Mills Ltd." (supra) and "Amit Corporation" (supra) that Commissioner has to give a definite finding that the order of the AO is erroneous and that inadequate enquiries by itself will not make the order as erroneous.

20. We find that the Hon'ble Delhi High Court in the case of "CIT vs. Goetz (I) Ltd." (supra) has elaborately discussed the various case laws regarding the powers of the Commissioner under section 263 including "CIT vs. Nagesh Knitwars Pvt. Ltd." (2012) 345 ITR 135 (Delhi – HC) and of the Hon'ble Bombay High Court in the case of "Gabriel India Ltd." (supra) and also of the Hon'ble Delhi High Court in the case of "Sunbeam Auto Ltd." (supra) and has reached to the conclusion that the Commissioner should be able demonstrate that the view taken by the AO was not possible being legally unsustainable and incorrect and this finding must be recorded. The Commissioner cannot remand the matter to the AO to decide whether the findings recorded are erroneous. In cases where there is inadequate enquiry but not lack of enquiry, the Commissioner must give and record a finding that the order/enquiry made is erroneous. This can happen if an enquiry and verification is conducted by the

Commissioner and he is able to establish and show the error or mistake made by the AO making the order unsustainable in law. The matter cannot be remitted for a fresh decision to the AO to conduct further enquiries without a finding that the order is erroneous and the Commissioner further must also satisfy the second limb of the provision that the order is also prejudicial to the interest of the Revenue. The Hon'ble Supreme Court in the case of "CIT vs. G.M. Mittal Stainless Steel (P) Ltd." (2003) 263 ITR 255 has observed that the satisfaction by the Commissioner must be one objectively justifiable and based on material either legal or factual when available, it cannot be mere ipse dixit of the Commissioner.

Now coming to the decision of the Apex court in the case of "Malabar Industrial Co. Ltd. vs. CIT" (2000) 109 Taxman 66 (SC) which has been relied by both the parties, the Ld. A.R. of the assessee has strongly relied upon the observation of the Hon'ble Supreme Court that where two views are possible and the AO adopts one of the views permissible in law, then the order cannot be treated as erroneous or prejudicial to the interest of Revenue, unless the view taken by the ITO is unsustainable in law. On the other hand, the Ld. D.R. has stressed upon the finding of the Hon'ble Supreme Court that where the AO had accepted entry in the statement of account filed by the assessee in the absence of any supporting material without making any enquiry, exercise of jurisdiction by Commissioner under section 263(1) of the Act was justified.

The facts before the Hon'ble Supreme Court were that the assessee company entered into an agreement for sale of estate of rubber plantation. The sale consideration was agreed to be paid in installments. The purchaser could not adhere to the schedule and on his request the parties agreed to the extension of time for payment of the installments on condition of vendee paying compensation/damage for loss of agricultural income and other liabilities. Accordingly, the purchaser paid the damages to the assessee company. In the

return filed, the assessee company claimed the said compensation and damages received as agricultural income. The AO accepted the same. The Commissioner, however, exercising his jurisdiction under section 263 held that the said amount was unconnected with any agricultural operation activity and was liable to be taxed under the head 'Income from other sources'. The matter ultimately travelled to the Hon'ble Supreme Court. The Hon'ble Supreme Court held that as per the provisions of section 263(1) the Commissioner has to be satisfied with twin conditions namely; (i) the order of the AO sought to be revised is erroneous, (ii) it is prejudicial to the interest of Revenue. If one of them is absent, *viz.*, if the order of the ITO is not erroneous but it is prejudicial to the interest of Revenue or if it is erroneous but is not prejudicial to the interest of Revenue, recourse cannot be had to section 263(1).

21. From the above facts, it is revealed that even in the case "Malabar Industrial Co. Ltd. (supra), the CIT had made enquiries and thereafter concluded that the income received by the assessee on account of compensation damages for extending the period of installments was not an agricultural income. The Ld. CIT, in fact, had examined the contention of the assessee and was of the view that the claim made by the assessee was not right, and that under these circumstances, it was held that the order of the AO was erroneous and prejudicial to the interest of Revenue.

22. There is no doubt about the proposition of law laid down in the other case laws relied upon by the Ld. AR that where there are two views possible and the view taken by the AO is one of the possible views, the Commissioner is not justified in exercising the power under section 263 of the Act only because he is of the different view.

23. In view of the above discussion of the various case laws, we find that except in the lone decision of the Hon'ble Karnataka High Court in the case of "Infosys Technology" (supra), the Hon'ble Supreme court and various other High Courts including our Jurisdictional High Court have been almost unanimous in holding that before enhancing or annulling or modifying or cancelling the assessment while exercising his powers under section 263 of the Act, the Commissioner must record a finding of fact or of law that the order of the AO is erroneous and is also prejudicial to the interest of Revenue as discussed above. In the case in hand, as discussed above, this prerequisite condition has not been satisfied as the Commissioner after calling for the explanation from the assessee has failed to make necessary exercise in examining or cause to examine the explanation/details submitted by the assessee for the justification of its claim. Hence, in the light of the various case laws as analyzed above, the order of the Commissioner exercising jurisdiction under section 263 of the Act cannot be held to be sustainable in law and the same is accordingly set aside.

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

Order pronounced in the open court on 06.11.2015.

Sd/-
(G.S. Pannu)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 06.11.2015.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai

The DR Concerned Bench
//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.