IN THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai

Before Shri S.Rifaur Rahman, Accountant Member
and Shri Ravish Sood, Judicial Member

ITA No.3971/Mum/2017
(Assessment Year: 2012-13)

Goldmohar Design and Apparel Park Ltd. 145, Goldmohar Mill, Dada Saheb Phalke Road, Dadar (E), Mumbai- 400 014 PAN – AADCG1613M	Vs.	Pr. CIT-7 R. No. 628, 6th Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400 020
(Appellant)		**(Respondent)**

Appellant by: Shri Vipul Joshi,
Ms. Dinkle Hariya &
Shri Divyesh Fataria, A.Rs

Respondent by: Shri. T. Kipgen &
Shri Rajesh Kumar Mishra, D.Rs

Date of Hearing: 06.03.2020
Date of Pronouncement: 31.07.2020

O R D E R

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the Principal Commissioner of Income Tax-7, Mumbai (for short 'Pr. CIT') under Sec. 263 of the Income Tax Act, 1961 (for short 'Act'), dated 30.03.2017 for A.Y. 2012-13. The assessee has assailed the impugned order on the following grounds of appeal before us:

"1. BREACH OF THE PRINCIPLES OF NATURAL JUSTICE.

1.1. The Learned Principal Commissioner of Income - tax - 7, Mumbai ["Ld. CIT"], erred in framing the revision order u/s. 263 of the Income - tax Act, 1961["the Act"] by

not giving proper, sufficient and effective opportunity of being heard to the Appellant.

1.2 It is submitted that in the facts and the circumstances of the case, and in law, the order is required to be held as bad and illegal as the same is passed in breach of the principles of natural justice as well as due to non – application of mind to the facts and the contentions brought on record by the Appellant.

WITHOUT PREJUDICE TO THE ABOVE

2. REVISION ILLEGAL

2.1 The Ld. CIT erred in passing the order u/s. 263 of the Act, revising the assessment order passed by the A.O. u/s. 143 (3) of the Act.

2.2 It is submitted that in the facts and the circumstances of the case, and in law, the order is bad, illegal and void as necessary pre - conditions for initiating the revision proceeding as well as the completion thereof were not fulfilled.

2.3 Without prejudice to the generality of the above, the CIT failed to appreciate that:

(i) the assessment order framed was not "erroneous" within the meaning of section 263 of the Act; and
(ii) in any case, the assessment order was not "prejudicial to the interest of the revenue" within the meaning of section 263 of the Act.

2.4 It is submitted that in the facts and the circumstances of the case, and in law, no revision u/s. 263 of the Act was called for.

WITHOUT FURTHER PREJUDICE TO THE ABOVE

3. ON MERITS

3.1 The Ld. CIT erred in directing the A.O. to disallow and back the claimed depreciation of Rs. 1,39,11,652/- in computation of "Income from Business or Profession".

3.2 It is submitted that in the facts and the circumstances of the case, and in law, no such specific direction was permissible.

3.3 Without prejudice to the above, it is submitted that in the facts and the circumstances of the case, and in law, even on merits also no such direction was called for.

3.4 Without further prejudice to the above, it is submitted that in the facts and the circumstances of the case, and in law, assuming - but not admitting that the depreciation was not allowable, alternatively, the entire amount was allowable as revenue expenditure.

4. The appellant craves leave to add, alter delete or modify all or any of the above ground at the time of hearing."

2. Briefly stated, the assessee is a company registered under the Companies Act, 1956, which was formed in pursuance of the scheme of revival and rehabilitation of sick textile companies, as framed and approved by the Board for Industrial and Financial Reconstruction (BIFR). On a perusal of the records, we find, that the assessee company was incorporated on 12.11.2007 with the object to carry on the business of textile mills as a Special Purpose Vehicle (SPV) under the Provisions of the

Companies Act, 1956, wherein 51% shares were held by the National Textile Corporation Ltd. (for short 'NTC Ltd'). As such, the assessee was a joint venture company between NTC Ltd. AND Pantaloon Retail and Capital (India) Ltd., SBPL infrastructure Ltd., and Sri Durga Textiles Processors Pvt. Ltd. (collectively referred to as strategic partners). The assessee company had filed its return of income for A.Y. 2012-13 on 25.09.2012, declaring its total income at Rs.6,99,81,128. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act. On the basis of the assessment framed by the A.O under Sec. 143(3) of the Act, the returned income of the assessee company was accepted, as such.

3. After the culmination of the assessment proceedings the Pr. CIT called for the assessment records of the assessee. On a perusal of the records, it was observed by the Pr. CIT that the assessee company had executed a lease agreement with NTC ltd. (holding company) for a period of 33 years, which was further extendable for two additional terms of 33 years each. As per the terms of the lease agreement a lease rent of Rs. 100/- per annum was payable by the assessee to the holding company for leasing of land, building and structures constructed thereon. As observed by the Pr. CIT, the properties described in the lease agreement were comprised of land bearing CS No. 56 of Dadar Naigaon Division, admeasuring 30,148.615 sq. mtrs, along with built up area of 35,377.803 sq. mtrs situated at Dada Saheb Phalke Road, Dadar (East), Mumbai. It was noticed by the Pr. CIT that the assessee company had in the financial year 2010-11 deposited a stamp duty of Rs.7,41,95,475/- as adjudicated by the Collector of Stamps, Maharashtra towards registration of the lease agreement, and had capitalised the same in its books of accounts. On a perusal of the records, it was observed by the Pr. CIT that the assessee treating the amount of stamp duty deposit of Rs.7,41,95,475/- as an intangible asset had claimed depreciation of Rs.1,39,11,652/- i.e @ 25% on it. Further, a perusal of the assessment records revealed three

depreciation charts for the year ending 31.03.2012 viz. (i) depreciation chart prepared as per 'Note 8A' under the Companies Act, 1956, wherein the leasehold rights/improvements were reflected at an opening balance of Rs.7,41,95,475/- under the head 'tangible assets'; (ii) depreciation chart forming part of Form No. 3CD (Tax Audit Report), wherein the opening and closing balance of the leasehold rights were reflected at Rs.5,56,46,606/-, and no claim for depreciation was raised on the same; and (iii) depreciation chart forming part of the computation of income along with details filed in the course of the assessment proceedings, vide a letter dated 09.09.2014, wherein the leasehold rights were reflected at an opening balance of Rs.5,56,46,606/- and closing balance of Rs.4,17,34,955/-, with a consequential claim of depreciation of Rs. 1,39,11,652/- i.e @ 25%. It was observed by the Pr. CIT that the A.O while framing the assessment, vide his order passed under Sec.143(3), dated 12.02.2015, had allowed the assessee's claim for depreciation of Rs.1,39,11,652/-, as such. As was discernible from the assessment order, the Pr. CIT observed that the A.O after specifically raising a query as to how the depreciation claimed on leasehold rights (as capitalised in the books of account) would qualify for depreciation as an 'intangible asset' under the provisions of Sec. 32(1)(ii) of the Act, had thereafter accepted the explanation of the assessee and allowed its claim. In the backdrop of the aforesaid facts, the Pr. CIT holding a conviction that the order passed by the A.O allowing the assessee's claim for depreciation on the leasehold rights under Sec. 32(1)(ii) of the Act, was erroneous insofar it was prejudicial to the interest of the revenue, therein issued a 'Show cause' notice (SCN) dated 31.03.2017, calling upon the assessee to explain as to why the assessment order may not be revised under Sec. 263 of the Act. In reply, the assessee objected to the assumption of jurisdiction by the Pr. CIT under Sec.263 of the Act, as well as tried to dispel the adverse inferences which were sought to be drawn by him as regards the entitlement of the assessee towards claim of depreciation on the leasehold rights. Apart from that, the Pr. CIT was also of the view that the

A.O by misconstruing the scope of Sec. 32(1)(ii) of the Act, had by incorrectly applying the law allowed the assessee's claim for depreciation on the capitalized value of leasehold rights. Referring to the language used in Section 32(1)(ii) of the Act, the Pr. CIT was of the view that the term "any other business or commercial rights of similar nature" was to be construed by applying the rule of nosticur a sociis, as per which the words used in the statute would derive their meaning from the surrounding words and were to be given a similar meaning. On the basis of his aforesaid observation, the Pr. CIT held a strong conviction that as the stamp duty deposit in respect of the tenancy rights of the assessee was much different from the intellectual property rights, viz. intangible assets, being know-how, patents, copyrights, trademarks, licenses, franchisees or any other business or commercial rights of similar nature, the same would thus not fall within the realm of the 'intangible rights' contemplated in Sec. 32(1)(ii) of the Act. At this stage, we may herein observe, the fact that the lease agreement was not registered was also taken cognizance of by the Pr. CIT. Elaborating on the said fact, it was observed by the Pr. CIT that the amount of stamp duty paid by the assessee was in the nature of a deposit, because due to litigation the lease agreement could not be registered. In the backdrop of his aforesaid deliberations the Pr. CIT concluded that as the stamp duty deposit in respect of the tenancy rights would have no significance whatsoever, either as regards the right to manufacture or actual manufacturing of the products or their sale carrying brand name or logo etc., the same could thus not be equated with 'any other business or commercial rights' as envisaged in Sec. 32(1)(ii), which as per him were to be restricted to intangible assets akin to, or in the nature of know-how, patents, copyrights, trademarks, licenses, franchisees etc., or any other such similarly placed business or commercial rights. As such, the Pr. CIT concluded that the stamp duty deposit which was capitalized by the assessee as leasehold rights could not be construed as an 'intangible asset' within the meaning of Sec. 32(1)(ii) of the Act. Observing, that as

the order passed by the A.O allowing depreciation of Rs. 1,39,11,652/- i.e @ 25% on the amount of stamp duty deposited by the assessee had rendered the assessment order as erroneous insofar it was prejudicial to the interest of the revenue, the Pr. CIT directed the A.O to disallow the said claim of depreciation and re-compute the income of the assessee under the head "business or profession". Interestingly, the Pr.CIT after concluding as hereinabove, had also directed the A.O to decide the issue only after examining the facts properly in accordance with law, and after giving an appropriate opportunity to the assessee to substantiate its claim.

4. Aggrieved, the assessee has assailed the order passed by the Pr. CIT in appeal before us. The ld. Authorised Representative (for short 'A.R') for the assessee took us through the facts of the case. As is discernible from the grounds of appeal, the order passed by the Pr. CIT under Sec. 263 of the Act has primarily been assailed before us for adjudication of two issues viz. (i) that, whether or not the assumption of jurisdiction and the consequential order passed by the Pr. CIT under Sec. 263 is in accordance with law; and (ii) that, as to whether or not the Pr. CIT is right in law and the facts of the case in declining the assessee's claim for depreciation on the leasehold rights by concluding that the same did not fall within the meaning of "intangible assets" as contemplated in Sec. 32(1)(ii) of the Act. The ld. A.R took us through a short note, wherein the facts of the case were briefly culled out. It was submitted by the ld. A.R that a similar claim for depreciation on the leasehold rights was raised by the assessee in the immediately preceding year i.e A.Y. 2011-12, which after necessary deliberations was allowed by the A.O on the basis of a scrutiny assessment order passed under Sec. 143(3), dated 25.02.2014. However, the ld. A.R very fairly submitted that the case of the assessee for A.Y. 2011-12 was thereafter reopened and its claim for depreciation on leasehold rights was withdrawn vide an order passed under Sec. 147 r.w.s 143(3) in December, 2016. Assailing the validity of

the jurisdiction assumed by the Pr. CIT under Sec. 263 of the Act, it was submitted by the ld. A.R, that in the course of the regular assessment proceedings the assessee had furnished complete details of its leasehold rights and claim of depreciation on the same with the A.O, who after necessary deliberations had found the same to be in order and allowed the deduction of the same. In order to fortify his aforesaid contention, the ld. A.R drew our attention to Page 82 & 84 of the assessee's paper book (APB). It was submitted by the ld. A.R, that the A.O in the course of the regular assessment proceedings had specifically called upon the assessee to explain its claim for depreciation on the leasehold rights. It was submitted by the ld. A.R, that the assessee, vide its replies dated 07.10.2014 and 21.01.2015 had submitted before the A.O that it had executed a lease deed with NTC Ltd. on 15.11.2007, and had paid stamp duty of Rs.7,41,95,475/- which was capitalized as leasehold rights in its books of accounts. Also, as submitted by the ld. A.R, the copy of the 'lease deed' was filed with the A.O in the course of the assessment proceedings. In the backdrop of the aforesaid facts, it was submitted by the ld. A.R, that now when the A.O had in the course of the assessment proceedings queried as regards the assessee's claim for depreciation on leasehold rights and after necessary deliberations had arrived at a plausible view and accepted the same, the Pr. CIT merely on the basis of a different view could not have thereafter assumed jurisdiction under Sec.263 of the Act. Adverting to the SCN, dated 21.03.2017, it was submitted by the ld. A.R. that the only ground/reason on the basis of which the assessment order was proposed to be revised by the Pr. CIT, was that as the leasehold rights did not fall within the meaning of 'intangible assets' as contemplated in Sec. 32(1)(ii) of the Act, its claim for depreciation on the same could not be accepted. As such, it was submitted by the ld. A.R, that in the aforesaid SCN, dated 21.03.2017, there was no whisper about any other ground or reason on the basis of which the assessment order was sought to be revised. Be that as it may, it was submitted by the ld. A.R that the assessee on the basis of

exhaustive submissions had submitted before the Pr. CIT that as its claim for depreciation on the leasehold rights was within the four corners of law, the order passed by the A.O under Sec. 143(3) could not be revised on the said count. On the basis of his aforesaid contention, it was submitted by the ld. A.R that the ground on the basis of which the order of revision was ultimately passed by the Pr. CIT was different from the reason given in the SCN, dated 21.03.2017, on the basis of which the revisional authority had sought to revise the assessment order. The ld. A.R. submitted that the Pr. CIT had 'set aside' the assessment order passed by the A.O under Sec.143(3), dated 12.02.2015 for multiple reasons, viz. (i). that, the leasehold rights did not fall within the meaning of the term 'any other business or commercial rights of similar nature' contemplated in Sec. 32(1)(ii) of the Act, which as per the rule of nosticur a sociis was to be restricted to intangible assets of the nature of know-how, patents, copyrights, trademarks, licenses, franchisees etc.; (ii). that, as the statutory auditor in the depreciation chart filed under the companies act had categorized the stamp duty deposit as a 'tangible asset', and also no depreciation was claimed in the tax audit report, the assessee's claim of depreciation on leasehold rights was wrongly allowed by the A.O; and (iii) that, the Pr. CIT was of the view that the assessee had claimed depreciation on land, while for, as per the assessee, the fact was that such claim was with respect to intangible rights i.e leasehold rights, which included buildings, structures and other intangible rights. Also, it was submitted by the ld. A.R, that the Pr. CIT had failed to deal with the various other factual and legal aspects which were raised by the assessee by way of exhaustive written submissions that were filed in the course of the revisional proceedings before him.

5. Objecting to the jurisdiction assumed by the Pr. CIT under Sec. 263 of the Act, it was further submitted by the ld. A.R that now when a similar claim for depreciation on leasehold rights that was allowed by the A.O vide his order passed under Sec. 143(3), dated 25.02.2014 for the

immediately preceding year i.e A.Y. 2011-12, was subsequently withdrawn on the basis of an order passed under Sec.147 r.w.s 143(3), in December, 2016, it was beyond comprehension as to how the similarly placed claim of depreciation on the said leasehold rights could have been withdrawn during the year under consideration by taking recourse to the exercise of revisional jurisdiction by the Pr. CIT under Sec. 263 of the Act. It was further averred by the ld. A.R that in the 'SCN' dated 23.03.2017 there was no whisper that there was any non-application of mind on the part of the A.O, which had led to assumption of jurisdiction by the Pr. CIT under Sec.263 of the Act. Order passed by the Pr. CIT under Sec. 263 was also assailed on the ground that certain adverse inferences had been drawn in respect of issues which were never confronted to the assessee either in the 'SCN', dated 23.03.2017, or in the course of the revisional proceedings. In order to buttress his contention that the Pr. CIT was statutorily bound to confront the assessee with the issues before drawing of any adverse inferences as regards the same, the ld. A.R had relied on a host of judicial pronouncements. Further, in support of his contention that the Pr. CIT was obligated to deal with all the objections which were raised by the assessee in the course of the revisional proceedings, the ld. A.R had drawn our attention to the following judicial pronouncements:

(i) J.P. Srivastava & Sons Ltd. Vs. CIT- [(1978) 111 ITR 326 (All)].
(ii) CIT Vs. Bhagat Shyam & Co. –[(1991) 188 ITR 608, 610 (All)]
(iii) Udaipur Mineral Development Syndicate Vs. ITO- [(1990) 35 ITD 172 (JP)]
(iv) Orient (Goa) Ltd. Vs. ACIT-[(1998) 66 ITD 479 (Pune)]
(v) Pankaj Dhruve Vs. ITO- [(1996) 86 Taxman 121 (Ahd) (Mag)]
(vi) CIT Vs. Sakthi Charities – [(2000) 244 ITR 226 (Mad)]
(vii) M. Rajashekhara Murthi Vs. Eleventh Ito-[(1984) 7 ITD 273 (Bang)]
(viii) Rattan Trading Co. Vs. IAC – [(1992) 40 ITD 164 (Del)(TM)]."

Apart from that, it was submitted by the ld. A.R. that in case the material which as per the CIT was not considered by the A.O while framing the assessment did not have any bearing on the conclusion arrived at by the A.O, then the CIT under such circumstances would be divested of his jurisdiction to revise the order under Sec. 263 of the Act. In support of his said contention the ld. A.R had relied on the order of the Hon'ble High

Court of Madras in the case of CIT vs. Sakthi Charities (2000) 244 ITR 226 (Mad). Also, the ld. A.R drawing support from the order of the ITAT, Banglore in the case of M. Raja Sekhara Murthi Vs. Eleventh, ITO (1984) 7 ITD 277 (Bang) submitted, that in case if it is shown by the assessee that the tax was properly assessed, then though the process may be erroneous, the CIT in the absence of the order being prejudicial to the interest of the revenue could not exercise his revisional jurisdiction under Sec. 263 of the Act. On merits, the ld. A.R in order to support his claim that the stamp duty on leasehold rights was allowable as a revenue expenditure under Sec. 37 of the Act relied on the following judicial pronouncements:

(i) CIT Vs. Cinecita (P) Ltd.- [(1982) 137 ITR 652 (Bom)].
(ii) Richardson Hindustan ltd. Vs. CIT- [(1988) 169 ITR 516 (Bom)]
(iii) CIT Vs. Madras Auto Services P. Ltd.- [(1998) 233 ITR 468 (SC)
(iv) CIT Vs. H.M.T. LTd. – [(1993) 203 ITR 820 (Karn)]
(v) DCIT Vs. Sun Pharmaceutical Ind. Ltd. – [(2010) 329 ITR 479 (Guj)]
(vi) ACIT Vs. Delhi International Airport (P.) Ltd.- [(2018) 89 taxmann.com 326 (Del)]
(vii) CIT Vs. Hari Vignesh Motors P. Ltd. [(2006) 282 ITR 338 (Madras)]."

Alternatively, it was submitted by the ld. A.R that the aforesaid stamp duty expenses incurred by the assessee should be allowed as deferred revenue expenditure. In support of his said contention reliance was placed on the order of the Hon'ble High Court of Karnataka in the case of S.M. Dayanand Vs. DCIT (2013) 220 taxman.com 104 (Kar).

6. Per contra, the ld. Departmental Representative (for short 'D.R') relied on the order passed by the Pr. CIT. It was submitted by the ld. D.R, that the Pr. CIT observing that the stamp duty deposited by the assessee in respect of the leasehold rights for the property under consideration did not fall within the meaning of 'any other business or commercial rights' as envisaged in Sec. 32(1)(ii), had thus rightly concluded that the order passed by the A.O u/s 143(3), dated 12.02.2015, allowing the assessee's claim for depreciation on the said leasehold rights, was rendered as erroneous in so far it was prejudicial to the interest of the revenue. As

such, it was averred by the ld. D.R, that the Pr. CIT remaining well within the scope of his jurisdiction had rightly directed the A.O to withdraw the assessee's claim for depreciation on leasehold rights. Further, it was submitted by the ld. D.R, that as the assessee was not vested with the ownership of the leasehold rights in respect of the property under consideration, its claim for depreciation under Sec. 32 on the same was not maintainable. Elaborating on his aforesaid contention, it was submitted by the ld. D.R that as the lease deed under consideration was unregistered, the same did not vest the ownership of the leasehold rights in the property under consideration with the assessee. In order to buttress his claim that the assessee was not entitled for claim of depreciation on the leasehold rights the ld. D.R had relied on the judgments of the Hon'ble Supreme Court in the case of M/s Mother Hospital Pvt. Ltd. Vs. CIT, Trichur (Civil Appeal No. 3360 of 2006, dated 08.03.2017), and R.K Palshikar (HUF) Vs. CIT, Madhya Pradesh (1988) SCR (3) 989. Further, reliance was also placed on the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. India Oil Corporation Ltd. (1996) 218 ITR 511 (Bom). Also, support was drawn from the order of the ITAT, Bangalore, in the case of M/s Cyber Park Development and construction Ltd. Vs. DCIT (ITA No. 1549/Bang/2012, dated 30.06.2010). In order to drive home his claim that de hors registration of the impugned lease agreement which was required to be compulsorily registered, the same as per the mandate of law could not be taken as an evidence of the transaction of lease under consideration, the ld. D.R had drawn support from Sec. 17 and Sec. 49 of the Indian Registration Act, 1908. Copies of the extract of the aforesaid statutory provisions were placed on our record. As such, it was the claim of the ld. D.R that de hors ownership of the leasehold rights in respect of the property under consideration, the assessee's claim for depreciation on the same was liable to be rejected on the said count itself.

7. On being confronted with the fact that as observed by the Pr. CIT, the lease agreement executed by the assessee with NTC Ltd. was unregistered during the year under consideration, it was submitted by the ld. A.R that the same would have no bearing on the assessee's entitlement towards claim of depreciation on the leasehold rights. Rebutting the aforesaid claim of the revenue, the ld. A.R had drawn our attention to various judicial pronouncements, as under:

(1) Podar Cement (P) ltd. (1997) 92 Taxman 541 (SC)/(1997) 226 ITR 625 (SC)/(1997) 141 CTR 67 (SC).

(2) Mysore Minerals Ltd. [1999] 106 Taxman 166 (SC)/[1999] 239 ITR 775 (SC)/[1999] 156 CTR 1 (SC)

(3) Dilip Singh Sardarsingg Bagga [1994] 77 Taxman 66 9Bombay)/[1993] 201 ITR 995 (Bombay)

(4) Basti Sugar Mills Co. Ltd. [2002] 123 Taxman 693 (Delhi)/[2002] 257 ITR 88 (Delhi)/[2002] 176 CTR 294 (Delhi)

(5) Varanasi Auto Sales (P) Ltd. [2010] 190 Taxman 60 (Allahabad)/[2020] 326 ITR 182 (Allahabad)/[2011] 238 CTR 107 (Allahabad)

(6) Trio Elevators Company (India) Ltd. [2016] 67 taxmann.com 348 (Ahmedabad - Trib.)/[2016] 157 ITD 1170 (Ahmedabad – Trib.)/[2010] 178 TTJ 258 (Ahmedabad – Trib.)

(7) Bhushan Steels & Strips Ltd. [2017] 82 taxmann.com 79 9Delhi/[2017] 390 ITR 485 (Delhi)

(8) Ram Kishan v. Bijender Mann [2013] 1 PLR 195.

Further, the ld. A.R in order to drive home his claim that the term "Intangible assets" has a wide meaning, and thus would take within its ambit leasehold rights, had taken us through certain judicial pronouncements which were relied upon by him.

8. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. As the ld. A.R has assailed the impugned order passed by the Pr. CIT under Sec. 263 of the Act on multiple grounds, we shall in turn deal with the same, as under :

(i). We find that it is the claim of the ld. A.R that now when the revenue had allowed the assessee's claim for depreciation on the leasehold rights in the immediately preceding year i.e A.Y. 2011-12, thereupon, no infirmity could be related on the part of the A.O in allowing the assessee's claim for depreciation on the opening WDV of the said leasehold rights during the year under consideration. In sum and substance, it was the claim of the ld. A.R that as the A.O by taking cognizance of the view that was taken by him while framing the assessment for the immediately preceding year i.e A.Y 2011-12, had adopted a consistent approach and rightly allowed the assessee's claim for depreciation on the leasehold rights, vide his order passed under Sec. 143(3), dated 12.02.2015, thus, no infirmity did arise from his order. We have given a thoughtful consideration to the aforesaid claim raised by the ld. A.R but do not find favour with the same. In our considered view, the ld. A.R is correct in stating that in a case where a claim for depreciation is allowed by the A.O while framing the assessment for the preceding year, then, no infirmity would arise from allowing of such depreciation on the opening WDV of the said asset/assets in the immediately succeeding year. But then, we find that the facts in the case before us stand on a different footing. As observed by us hereinabove, or as a matter of fact fairly admitted by the ld. A.R, the assessment that was framed under Sec. 143(3) dated 25.02.2014 for the immediately preceding year i.e A.Y.2011-12, was thereafter reopened by the A.O and the assessee's claim for depreciation on leasehold rights was withdrawn vide an order passed under Sec. 143(3) r.w.s 147 in December, 2016. As such, on the date when the SCN dated 23.03.2017 was issued to the assessee for the year under consideration, the assessee's claim for depreciation that was earlier allowed in the course of the regular assessment for the immediately preceding year i.e A.Y. 2011-12, was already withdrawn pursuant to the reassessment order passed under Sec. 143(3) r.w.s 147 of the Act. In the backdrop of the aforesaid facts, we are unable to accept the claim of the ld. A.R that going by the principle of consistency, now

when the claim of depreciation on leasehold rights was allowed by the A.O in the preceding year, no infirmity could be related to the allowing of the the assessee's claim for depreciation on the Opening WDV of the said leasehold rights for the year under consideration. In fact, the judicial pronouncements relied upon by the ld. A.R to drive home his aforesaid claim, viz. (i) DIT(IT) Vs. HSBC Asset Management (I) P. Ltd. (2014) 47 taxman.com 286 (Bom); (ii) CIT Vs. Hindustan Coca Cola Beverages Pvt. Ltd. (2011) 331 ITR 192 (Del); (iii) PIEM Hotels Ltd. Vs. DCIT (2011) 128 ITD 275 (Mum); and (iv) Century Enka Ltd. Vs. DCIT (2015) 37 ITR (T) 644 (Kol), are all distinguishable on facts. On a perusal of the aforesaid respective orders, we find that in neither of the said cases the depreciation allowed in the preceding year was subsequently withdrawn, as a result whereof, going by the principle of consistency depreciation on the opening WDV of the assets was allowed in the subsequent year in the said cases. Accordingly, not finding favour with the aforesaid claim of the ld. A.R, we decline to accept the same.

(ii) We shall now advert to the claim of the ld. A.R that the revisional authority was divested of his jurisdiction from drawing adverse inferences in respect of issues which were neither raised in the SCN nor confronted to the assessee in the course of the revisional proceedings. On being confronted with the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Amitabh Bachchan (2016) 384 ITR 200 (SC), wherein the Hon'ble Apex Court had observed that it is not mandatory on the part of a revisional authority to issue a 'show cause' notice under Sec. 263 of the Act, it was submitted by the ld. A.R that the said judicial pronouncement in fact supported the case of the present assessee. In order to buttress his aforesaid claim the ld. A.R took us through the order of the Hon'ble Supreme Court in the case of Amitabh Bachchan(supra). It was submitted by the ld. A.R, that the Hon'ble Apex Court in its aforesaid order had drawn a distinction between a case where a non-reference of certain issue in the SCN was used as a ground to challenge the assumption of

revisional jurisdiction by the CIT AND a case where such non-reference followed by non granting of proper opportunity was taken as a ground of violation of the Principle of natural justice. It was submitted by the ld. A.R, that the Hon'ble Apex Court relying on its earlier order in the case of CIT Vs. Electro House (1971) 82 ITR 824 (SC), had observed, that though Sec. 263, per se, did not prescribed any notice to be given to the assessee, but then, it required the commissioner to give an opportunity of being heard to the assessee. In sum and substance, it was the claim of the ld. A.R that a perusal of the judgment of the Hon'ble High Court in the case of Amitabh Bachhan (supra) revealed, that the Hon'ble Apex Court had emphasised on the fact that an opportunity of being heard was indispensably required to be afforded to the assessee by the revisional authority, failing which the revisional order therein passed would be rendered legally fragile, though not on the ground of lack of jurisdiction, but on the ground of violation of principles of natural justice. In the backdrop of his aforesaid contentions, it was submitted by the ld. A.R, that as in the present case the Pr. CIT without confronting the assessee had drawn adverse inferences on certain issues in his order passed u/s 263, the order so passed by him was thus not maintainable and was liable to be quashed on the said count itself. Admittedly, we are principally in agreement with the aforesaid claim of the ld. A.R that a revisional authority as per the mandate of law, or in fact as per the canons of natural justice is precluded from drawing of any adverse inferences as regards an issue in respect of which no opportunity of being heard was afforded to the assessee in the course of the revisional proceedings. On a perusal of the order passed by the Pr. CIT u/s 263 of the Act, it transpires that he had at length at Page 10-11 - Para 7–8 of his order observed, that as the leasehold rights did not fall within the meaning of "intangible assets" as contemplated in Sec. 32(1)(ii) of the Act, the order passed by the A.O u/s 143(3), dated 12.02.2015, therein accepting the assessee's claim for depreciation on the said leasehold rights was rendered as erroneous in so far it was prejudicial to the interest of the revenue. In so

far, the aforesaid observation of the Pr. CIT is concerned, we find that the same had been arrived at by the revisional authority after calling for an explanation from the assessee, and considering its reply as regards the same. But then, the Pr. CIT had also observed that the A.O was in error in allowing depreciation @25% on the leasehold rights without applying his mind on certain material facts borne from the records, viz. (i). that, as per the depreciation chart forming part of the 'balance sheet' prepared under the Companies Act, the stamp duty deposit was shown as a 'tangible asset'; (ii). that, the auditor had not claimed depreciation on the leasehold rights in the depreciation chart attached with the Form 3CD (Tax Audit Report); (iii). that, as per the 'Schedule 1' attached with the lease deed the property under consideration was shown as land with built up area; and (iv). that, the other clauses of the lease agreement reflected that the lease transaction was mainly related to land admeasuring 30,148 sq. mtrs, and no depreciation as per the Income tax Rules was allowed on land. On a perusal of the 'SCN', dated 23.03.2017, we find that the assessee was not called upon to put forth an explanation as regards the issues marked as S.No.(i) to (iv) hereinabove. It is the claim of the ld. A.R, that even in the course of the revisional proceedings the Pr. CIT had never confronted the aforesaid issues to the assessee. To sum up, it is the claim of the ld. A.R, that the adverse inferences as regards the aforesaid issues marked as S.No.(i) to (iv) were arrived at by the Pr. CIT at the back of the assessee. On being confronted with the said claim of the counsel for the assessee, the ld. D.R could not rebut the same. Rather, it was the claim of the ld. D.R, that the Pr. CIT had declined the assessee's claim for depreciation on the stamp duty value of the leasehold rights, on the ground, that the same did not fall within the meaning of the term 'any other business or commercial rights of similar nature' contemplated in Sec. 32(1)(ii) of the Act, which as per the rule of nosticur a sociis was to be restricted to intangible assets of the nature of know-how, patents, copyrights, trademarks, licenses, franchisees etc. We have given a thoughtful consideration to the aforesaid issue before us, and find

substance in the claim of the ld. A.R, that the adverse inferences drawn by the Pr. CIT at the back of the assessee i.e without affording any opportunity to the assessee to rebut the same cannot be sustained. In our considered view, as the Pr. CIT had drawn adverse inferences as regards the issues stated at Sr.No.(i) to (iv), without calling for any explanation as regards the same from the assessee, the same cannot be sustained and are liable to be vacated. As such, the observations of the Pr. CIT recorded at the back of the assessee ,viz. (i). the A.O by not considering the depreciation chart prepared under the Companies Act; (ii). the A.O by not considering the depreciation chart attached with the audit report; (iii). the A.O by not considering the 'Schedule 1' attached with the lease deed, which revealed that the property under consideration was shown as land with built up area; and (iv). the A.O by not considering the lease deed which reflected that the transactions were mainly related to land admeasuring 30,148 sq. mtrs, had erred in allowing depreciation @25% without application of mind, cannot be sustained, and are thus to the said extent vacated.

(iii). We shall now advert to the claim of the ld. A.R that as the statutory powers vested under Sec. 147 and Sec. 263 are mutually exclusive and not overlapping, therefore, the withdrawal of the assessee's claim of depreciation on stamp duty deposit in respect of the lease agreement by exercise of revisional powers u/s 263 during the year under consideration, clearly militated against withdrawal of such depreciation by reopening of its case u/s 147 in the immediately preceding year i.e A.Y 2011-12. In the backdrop of his aforesaid contention, it was averred by the ld. A.R that now when the assessee's claim for depreciation on leasehold rights for the immediately preceding year i.e A.Y. 2011-12 was withdrawn by the revenue by taking recourse to re-assessment proceedings under Sec. 147 of the Act, there was thus no justification in withdrawing such claim of depreciation for the year under consideration by assumption of jurisdiction by the Pr. CIT under Sec. 263 of the Act. In support of his

aforesaid contention the ld. A.R had relied on certain judicial pronouncements viz. (i) Karin Tharuvi T. States Ltd. Vs. State (1963) 48 ITR 83 (SC); (ii) CIT Vs. D.N. Dosani (2006) 280 ITR 275 (Guj); (iii) Samtalal Mehendi Ratta (HUF) Vs. CIT (2006) 143 STC 511 (Gau); and (iv) Hariom Bansal Vs. ITO (2012) 51 SOT 118 (Chennai). We have given a thoughtful consideration to the aforesaid contention of the ld. A.R, and perused the material available on record, as well as the judicial pronouncements relied upon by him. Admittedly, the powers vested with the respective authorities under Sec. 147 and under Sec. 263 of the Act, are separate and distinct, which subject to fulfilment of the requisite conditions contemplated in the said respective statutory provisions, operate in their respective fields. In so far, the powers vested with the A.O under Sec. 147 are concerned, the same can be exercised where the A.O has a reason to believe that any income of the assessee chargeable to tax has escaped assessment. On the other hand, the powers vested with the Pr. CIT/CIT under Sec. 263 of the Act can be exercised, where such revisional authority finds that the order passed by the assessing officer is erroneous in so far it is prejudicial to the interest of the revenue. As observed by us hereinabove, we are in agreement with the contention advanced by the ld. A.R that the powers vested with the respective authorities under the aforesaid statutory provisions, subject to satisfaction of the conditions therein envisaged, operate in their respective fields. In our considered view, as long as the conditions contemplated in the respective sections for assumption of jurisdiction by the concerned authorities are satisfied, there cannot be any bar on exercise of the same by the concerned revenue authority. In the case before us, the Pr. CIT held a conviction that the allowing of the assessee's claim for depreciation on the leasehold rights by the A.O, had rendered the latters order as erroneous to the extent it was prejudicial to the interest of the revenue. We are unable to persuade ourselves to subscribe to the contention of the ld. A.R, that as the assessee's claim for depreciation on leasehold rights was withdrawn by the A.O in the

preceding year by taking recourse to proceedings under Sec. 147 of the Act, the said fact on a standalone basis would divest the Pr. CIT from exercising his revisional jurisdiction for withdrawing such claim of depreciation on leasehold rights for the year under consideration. We are of a strong conviction, that as long as the requisite conditions for assumption of jurisdiction under Sec. 263 are satisfied by a revisional authority, no infirmity can be related to the validity of assumption of such jurisdiction by the said authority. On the basis of our aforesaid observations, we are unable to persuade ourselves to accept the contention of the ld. A.R, that the withdrawal of the assessee's claim for depreciation for the immediately preceding year i.e. A.Y. 2011-12 by the A.O by taking recourse to re-assessment proceedings under Sec. 147, would debar the Pr. CIT from exercising his revisional jurisdiction under Sec. 263, despite the fact that the assessment order passed by the A.O allowing assessee's claim for depreciation on leasehold rights was found by the revisional authority to be erroneous, insofar it was prejudicial to the interest of the revenue.

(iv). We shall now take up the contention of the ld. A.R that the dual conditions set out in Sec. 263 viz. (i) that the assessment order passed by the A.O is erroneous; and (ii) prejudicial to the interest of the revenue, are required to be cumulatively satisfied for valid assumption of jurisdiction under the said statutory provision. Apart from that, it is the claim of the ld. A.R that an order can be held to be erroneous, only where the assessment framed by the A.O deviates from the law. In support of his contention that the aforesaid set of conditions are mandatorily required to be cumulatively satisfied, reliance has been placed by the ld. A.R on the judgements of the Hon'ble Supreme Court in the case of Malabar Industrial Company Ltd. Vs. CIT (2000) 243 ITR 83 (SC) and CIT Vs. Max India Ltd. (2007) 295 ITR 282 (SC). Also, support was drawn by him from the judgments of the Hon'ble High Court of Bombay in the case of viz. (i) CIT vs. Gabriel India Ltd. (1993) 203 ITR 108 (Bom); (ii)

Grasim Industry Ltd. Vs. CIT (2010) 321 ITR 92 (Bom); (iii) CIT Vs. LIC Housing Finance Ltd. (2014) 367 ITR 458 (Bom); (iv) CIT Vs. Gera Development (P) Ltd. (2016) 387 ITR 691 (Bom); and (v) CIT Vs. Kiran Hirji Shah (2015) 56 Taxman.com 360 (Bom). On the basis of his aforesaid contentions, it was the claim of the ld. A.R that if the A.O while framing the assessment had adopted one of the possible view in law, the Pr. CIT was divested of invoking his revisional jurisdiction under Sec. 263 of the Act. Apart from that, it has been the claim of the ld. A.R before us, that in case where the A.O had duly conducted an enquiry in respect of an issue, the revisional authority would thereafter not be vested with the jurisdiction for directing a fuller inquiry to find out if the view so taken is erroneous. In other words, it was the claim of the ld. A.R, that once the A.O was satisfied with the explanation offered by the assessee, it was not open to the CIT in exercise of his revisional powers to direct that a further inquiry be carried out. In sum and substance, as averred by the ld. A.R, though lack of enquiry would justify invoking of revisional jurisdiction by the CIT, but then, a case of inadequate inquiry cannot form the basis for assumption of jurisdiction under Sec. 263 of the Act. In support of his aforesaid contention the ld. A.R had relied on a host of judicial pronouncements. Also, it was the claim of the ld. A.R that merely because in the body of the assessment order there was an absence of an elaborate discussion by the A.O as regards the entitlement of the assessee towards claim of depreciation on the leasehold rights, the same would however not justify assumption of jurisdiction by the CIT under Sec. 263 of the Act. Elaborating on his aforesaid contention, it was averred by the ld. A.R, that the order passed by the A.O cannot be held to be erroneous simply because he had not made an elaborate discussion in respect of an issue in his assessment order. In support of his aforesaid contention the ld. A.R had relied on the judgement of the Hon'ble High Court of Bombay in the case of CIT Vs. Reliance Communication Ltd. (2016) 69 taxman.com 103 (Bom). It was further submitted by the ld. A.R that the aforesaid order of the Hon'ble High Court had been affirmed by the Hon'ble Supreme Court

in CIT Vs. Reliance Communications Ltd. (2016) 76 taxmann.com 226 (SC), and the SLP filed by the revenue had been dismissed. Also, in order to buttress his aforesaid contention, the ld. A.R had relied on the judgments of the Hon'ble High Court of Bombay in the case of CIT Vs. Gabriel India Ltd. (1993) 203 ITR 108 (Bom) and CIT Vs. Fine Jewellery (I) Ltd. (2015) 312 ITR 303 (Bom).

9. We have given a thoughtful consideration to the aforesaid contentions advanced by the ld. A.R, and find ourselves to be principally in agreement with the same. In our considered view, the Pr. CIT can assume jurisdiction under Sec. 263 only after carrying out a cumulative satisfaction of the two fold conditions therein prescribed viz. the order passed by the A.O is erroneous insofar it is prejudicial to the interest of the revenue. Also, in a case where the A.O had adopted one of the possible views which is permissible in law, the CIT would stand divested from assuming jurisdiction under Sec. 263, for the purpose of substituting his view as against that arrived at by the A.O. Further, there is no dispute on the aspect that unlike a case of lack of inquiry or no inquiry by the A.O, a case of inadequate inquiry by the A.O would not justify assumption of jurisdiction by the CIT under Sec. 263 of the Act. Also, we are in agreement with the claim of the ld. A.R, that merely because the A.O in his assessment order had not made an elaborate discussion in respect of an issue which was considered by him in the course of the assessment proceedings, would not on the said standalone basis justify assumption of jurisdiction by the CIT u/s 263 of the Act. In the backdrop of the aforesaid contentions advanced by the ld. A.R, we find ourselves to be principally in agreement with the same. But at the same time, we are unable to comprehend as to where the Pr. CIT had contravened the aforesaid mandate of law, or traversed beyond the same. On a perusal of the order passed by the Pr. CIT under Sec. 263 of the Act, we find that the revisional authority observing that the leasehold rights do not fall within the meaning of 'intangible asset' under Sec. 32(1)(ii) of the Act, had thus

for the said reason concluded that the allowing of depreciation on the same by the A.O while framing the assessment had rendered his order erroneous insofar it was prejudicial to the interest of the revenue. We shall hereinafter address or in fact test the validity of the aforesaid observation of the Pr.CIT in the backdrop of the aforesaid principles as had been canvassed by the ld. A.R before us.

10. On a perusal of the records, we find that it is an admitted fact that the lease agreement dated 15.11.2007 executed by the assessee with NTC Ltd. was unregistered, though a stamp duty of Rs.7,41,95,475/- was deposited by the assessee on 06.08.2010 (relevant to A.Y 2011-12), as per the order of the Collector of Stamps, Mumbai. As per the order passed by the Pr.CIT, the amount of stamp duty paid by the assessee was in the nature of a deposit, because, due to litigation the lease agreement could not be registered. We find that the aforesaid factual position had been commented upon by the auditors in their audit report, wherein at Note 8, Page 60 of APB, they had stated as under :

> "(a) The Company has deposited stamp duty for Rs. 7,41,95,475/- as adjudicated by Collector of Stamps, Maharashtra, Mumbai for registration of lease deed for leasehold land/properties in the financial year 2010-11 for which registration of lease deed is pending. The Company would be able to have full legal right of use of the said property as per lease deed and Shareholder's Agreement only after completion of registration process and receipt of handover letter from NTC Ltd. Further structural modification, if any, would depend on the disposal of suit and removing of stay order on the property leased to the company related to heritage issue by Bombay High Court. (refer para 8 of Note 20)"

Insofar, the aforesaid factual position is concerned, the same has not been disputed by the assessee. In the backdrop of the aforesaid facts, it was averred by the ld. D.R, that as per Sec. 17(1)(d) of the Indian Registration Act, 1908, the leases of immovable property from year to year or for any term exceeding one year, reserving an yearly rent, are mandatorily required to be registered. It was further submitted by the ld. D.R that as per Sec. 49 of the Indian Registration Act, 1908, in case of non-registration of a document which was mandatorily required to be registered under Sec. 17 of the Indian Registration Act, 1908, the same would neither be received as evidence of any transaction effecting such

property or confer any power as regards the same. Elaborating on his aforesaid contention, it was submitted by the ld. D.R that as per Sec. 17(1)(d) of the Indian Registration Act, 1908, the lease deed executed by the assessee was mandatorily required to be registered. As submitted by the ld. D.R, as the aforesaid lease deed had not been registered, the same as per Sec. 49 of the Indian Registration Act, 1908, would thus neither affect the immovable property comprised therein nor be received as evidence of the impugned lease transaction affecting such property. On a conjoint reading of Sec. 17 r.w.s. 49 of the Indian Registration Act, 1908, it was submitted by the ld. D.R that the unregistered lease agreement (which was required to be compulsorily registered) could thereafter only be taken as an evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877), or as an evidence of any collateral transaction not required to be effected by a registered document. In sum and substance, it was the claim of the ld. D.R, that the impugned lease agreement dated 15.11.2007(supra), de hors registration as per mandate of the Indian Registration Act, 1908, would fall short of a document evidencing vesting of any leasehold rights with the assessee for the aforesaid property under consideration, much the less in the latters status as that of an 'owner' of the same. In order to fortify his aforesaid contention, the ld. D.R had relied on the judgment of the Hon'ble Supreme Court in the case of M/s Mother Hospital Pvt. Ltd. Vs. CIT, Trichur (2017) 392 ITR 628 (SC) (copy placed on record). The ld. D.R drawing our attention to the aforesaid judgment of the Hon'ble Apex Court submitted, that it was concluded by the Hon'ble Court that de hors a valid title in the immovable property, which could have been vested with the assessee before them only on the basis of a registered document, the assessee could not be held to be the owner of the immovable property under consideration and was thus not entitled for depreciation on the same under Sec. 32 of the Act. Rebutting the aforesaid contention of the revenue, the ld. A.R submitted, that the non-registration of the lease agreement would have no adverse bearing on the

entitlement of the assessee for claim of depreciation on its leasehold rights u/s 32(1)(ii) of the Act. In support of his aforesaid contention the ld. A.R had inter alia relied on the judgments of the Hon'ble Supreme Court in the case of (i). CIT Vs. Poddar Cement Pvt. ltd. (1997) 226 ITR 625 (SC); and (ii) Mysore Minerals Limited Vs. CIT (1999) 239 ITR 775 (SC).

11. Although, we would not hesitate to observe that there is substance in the aforesaid claim of the ld. D.R, which is further supported by the judgment of the Hon'ble Supreme Court in the case of M/s Mother Hospital Pvt. Ltd. Vs. CIT, Trichur (2017) 392 ITR 628 (SC), but then, in the backdrop of the fact that the said ground had not formed the basis of the decision given by the Pr. CIT in his order passed u/s 263, the same cannot be entertained on our part. As per the settled position of law, the Tribunal cannot uphold the order of the Pr. CIT/CIT on any other ground which, in its opinion, was available before the revisional authority. In fact, if the Tribunal is allowed to uphold the order passed by the revisional authority u/s 263 on any other ground, then it would amount to sharing of the exclusive jurisdiction vested in the commissioner, which we are afraid is not warranted under the Act. As per the mandate of Sec. 263 of the Act, it is only the Pr. CIT/CIT who is authorised to proceed in the matter and, therefore, it is his satisfaction according to which he may pass necessary orders thereunder in accordance with law. As such, if the grounds which were available to him at the time of passing of the order do not find a mention in his order, appealed against, then it will be deemed that he had rejected those grounds for the purpose of any action u/s 263(1). Accordingly, in such a situation, the Tribunal while hearing an appeal filed by the assessee against an order u/s 263 cannot substitute the grounds which the Pr. CIT/CIT himself did not think proper to form the basis of his order. Our aforesaid observations are fortified by the judgments of the Hon'ble High Court of Punjab in the case of CIT Vs. Jagadhari Electric Supply & Industrial Co. (1983) 140 ITR 490 (P&H) and

that of the Hon'ble High Court of Andhra Pradesh in the case of Spectra Shares & Scrips Pvt. Ltd. Vs. CIT (2013) 354 ITR 35 (AP). In the backdrop of our aforesaid deliberations, the contention raised by the revenue before us, a well reasoned one, that de hors registration of the lease agreement dated 15.11.2007 as per mandate of the Indian Registration Act, 1908, the assessee could not be held to be the 'owner' of the leasehold rights of the property under consideration, cannot be accepted and has to fail.

12. We shall now focus on the contention of the ld. A.R, that now when, the A.O while framing the assessment vide his order passed u/s 143(3), dated. 12.02.2015, had after necessary deliberations arrived at a possible view that the assessee's claim for depreciation on the stamp duty paid as regards the lease agreement (as capitalised in the books of account) qualified for depreciation as an 'intangible asset' under the provisions of Sec. 32(1)(ii) of the Act, it was not permissible for the Pr. CIT to have assumed jurisdiction u/s 263 of the Act, for the reason, that he held a different view as against that arrived at by the A.O. As observed by us hereinabove, the assessee in the course of the assessment proceedings had furnished details of its leasehold rights and claim of depreciation on the same with the A.O, who after necessary deliberations had found the same to be in order. In fact, as noticed by us hereinabove, the A.O in the course of the regular assessment proceedings had specifically called upon the assessee to explain its claim of depreciation on the leasehold rights, in reply to which, the assessee had vide its letters dated 07.10.2014 and 21.01.2015, submitted before the A.O, that it had executed a lease deed with NTC Ltd. on 15.11.2007 and had paid stamp duty of Rs.7,41,95,475/- which was capitalized as leasehold rights in its books of accounts. Also, a copy of the 'lease deed' was filed with the A.O in the course of the assessment proceedings.

13. We have deliberated at length on the issue under consideration, in the backdrop of the orders of the lower authorities and the material

available on record, as well as the judicial pronouncements placed on our record. As observed by us hereinabove, the solitary issue that survives before us is that whether or not the A.O had taken a possible view that the assessee was entitled to claim depreciation on the amount of stamp duty paid in respect of the lease agreement, pending registration. Rebutting the said claim of the assessee, it is the case of the revenue that the leasehold rights do not fall within the meaning of the term 'any other business or commercial rights of similar nature' contemplated in Sec. 32(1)(ii) of the Act, which as per the rule of nosticur a sociis was to be restricted to intangible assets of the nature of know-how, patents, copyrights, trademarks, licenses, franchisees etc. We find that the Hon'ble High Court of Delhi in the case of Areva T & D India Ltd. Vs. DCIT (2012) 345 ITR 421 (Del), applying the principle of ejusdem generis, for interpreting the expression "business or commercial rights of similar nature" specified in Sec. 32(1)(ii) of the Act, had observed, that such rights need not answer the description of "knowhow, patents, copyrights, trademarks, licenses or franchises" but must be of a similar nature as the specified assets. On a perusal of the meaning of the categories of specific intangible assets referred in s 32(1)(ii) of the Act preceding the term "business or commercial rights of similar nature", it was observed by the Hon'ble High Court that the aforesaid intangible assets were not of the same kind and were in fact clearly distinct from one another. It was further observed, that the fact that after the specified intangible assets the words "business or commercial rights of similar nature" had been additionally used, clearly demonstrated that the legislature did not intended to provide for depreciation only in respect of specified intangible assets but also for other categories of intangible assets, which were neither feasible nor possible to be exhaustively enumerated. As such, it was observed, that the nature of "business or commercial rights" cannot be restricted to only the aforesaid six categories of assets, viz., knowhow, patents, copyrights, trademarks, licenses or franchises. It was observed by the Hon'ble High Court, that the nature of "business or commercial

rights" can be of the same genus in which all the aforesaid six assets fall. As observed by the Hon'ble High Court, all the above six specified assets fall in the genus of intangible assets that form part of the tool of trade of an assessee facilitating smooth carrying on of the business. On the basis of its aforesaid observations, it was observed by the Hon'ble High Court that in case of the assessee before them, intangible assets, viz., business claims; business information; business records; contracts; employees; and knowhow, all were assets, which were invaluable and facilitated the carrying on the transmission and distribution business by the assessee, which was hitherto being carried out by the transferor, without any interruption. Accordingly, it was observed by the High Court, that the aforesaid intangible assets were, therefore, comparable to a license to carry out the existing transmission and distribution business of the transferor. It was further observed by the Hon'ble High Court, that in the absence of the aforesaid intangible assets, the assessee would have had to commence business from scratch and go through the gestation period, whereas by acquiring the aforesaid business rights along with the tangible assets, the assessee got an up and running business. The Hon'ble High Court while concluding as hereinabove had drawn support from the judgment of the Hon'ble Supreme Court in the case of Techno Shares and Stocks Ltd. v. CIT, (2010) 327 ITR 323, wherein it was held that intangible assets owned by the assessee and used for the business purpose which enables the assessee to access the market and has an economic and money value is a "license" or "akin to a license" which is one of the items falling in Sec. 32(1)(ii) of the Act. In the backdrop of its aforesaid observations, the Hon'ble High Court had concluded that the specified intangible assets which were acquired by the assessee before them under slump sale agreement were in the nature of "business or commercial rights of similar nature" specified in s 32(1)(ii) of the Act, and were accordingly eligible for depreciation under that section. As observed by the Hon'ble High Court of Delhi in the case of Areva T & D India Ltd. (supra), 'any other business or commercial rights of similar nature' as

contemplated in Sec. 32(1)(ii) need not answer the description of "knowhow, patents, copyrights, trademarks, licenses or franchises" but must be of similar nature as the specified assets, of the same genus in which the aforesaid specified six assets fall. Elaborating further, it was observed by the Hon'ble High Court that all of the above fall in the genus of intangible assets that form part of the tool of trade of an assessee facilitating smooth carrying on of the business.

14. We shall now advert to the claim of the ld. A.R that no infirmity emerged from the order of the A.O, who vide his order passed u/s 143(3), dated 12.02.2015, had rightly allowed the assessee's claim for depreciation on the stamp duty expenses which were incurred by the assessee in respect of the lease agreement (pending registration), by treating the same as an "intangible asset" u/s 32(1)(ii) of the Act. As observed by us hereinabove, in order to fall within the realm of 'any other business or commercial rights of similar nature' as contemplated in Sec. 32(1)(ii) of the Act, and therein to be construed as an "intangible asset" eligible for depreciation under the said statutory provision, the 'right' under consideration would require to cumulatively satisfy a two fold test viz. (i). the right should be a business or commercial right; and (ii) the right though need not answer the description of the six specified intangible assets viz knowhow, patents, copyrights, trademarks, licenses or franchises, but must be of a similar nature. We have given a thoughtful consideration to the issue before us, and are unable to persuade ourselves to subscribe to the claim of the assessee that the stamp duty expenses incurred by it in respect of the lease agreement (pending registration) would par take the character as that of a business or commercial right, much the less of a nature similar to that of the six specified intangible assets viz. knowhow, patents, copyrights, trademarks, licenses or franchises contemplated in Sec. 32(1)(ii) of the Act. As a matter of fact, the judgments of the Hon'ble High Court of Bombay in the case of viz. (i). CIT Vs. Cinecita (P) Ltd, (1982) 137 ITR 652 (Bom); (ii).

Richardson Hindustan Ltd. Vs. CIT (1988) 169 ITR 516 (Bom); (iii). CIT Vs. Hoechst Pharmaceuticals Ltd. (1978) 113 ITR 877 (Bom), as had been relied upon by the ld. A.R before us, in itself negates the claim of the assessee that the expenditure incurred towards stamp duty expenses in respect of a lease deed was to be construed as an "intangible asset" falling within the meaning of Sec. 32(1)(ii) of the Act, and would thus be eligible for depreciation. In the case of Cinecita (P) Ltd. (supra), it was observed by the Hon'ble High Court, that the expenditure incurred by an assessee on registration fee, solicitor's fee and stamp duty in connection with registration of lease deed was a revenue expenditure, irrespective of the period of lease. In the case of Hoechst Pharmaceuticals Ltd.(supra), the Hon'ble High Court had observed that brokerage and stamp duty expenditure incurred for obtaining a lease of office premises for a short duration of five years did not secure any advantage of enduring benefit, and thus was allowable as a revenue expenditure under s. 37. In the case of Richardson Hindustan Ltd.(supra), the Hon'ble High Court following its earlier view in the case of Cinecita (P) Ltd. (supra), had concluded, that stamp duty paid on execution of a lease deed was a revenue expenditure as no enduring benefit was received by assessee in acquiring the premises on lease. Further, the Hon'ble High Court in the case of CIT-3 Vs. Reliance Industrial Infrastructure Ltd. (2015) 234 Taxman 256 (Bom), reiterating the view earlier take by it in the aforesaid judgments, had observed, that where stamp duty was paid by the assessee in respect of a deed of lease for taking a property on a lease for a period of 30 years, the same was to be allowed as a revenue expenditure within the meaning of Sec. 37(1) of the Act. On a perusal of the aforesaid judicial pronouncements of the Hon'ble High Court of jurisdiction, we are of the considered view, that the claim of the ld. A.R that the stamp duty expenses incurred for taking the property under consideration on lease for a period of 33 years was to be construed as an "intangible asset" within the meaning of Sec. 32(1)(ii), and thus eligible for depreciation, cannot be accepted. Apart from that, we are also unable to comprehend that as

to how a simpliciter payment of stamp duty expenses on the lease agreement (pending registration), would bring into existence an intangible asset of the same genus, as that of the six specified categories of assets, viz., knowhow, patents, copyrights, trademarks, licenses or franchises, as contemplated in Sec. 32(1)(ii) of the Act. Insofar the plethora of judicial pronouncements that have been pressed into service by the assessee, in order to drive home its claim that the expenses incurred towards payment of stamp duty expenses on the lease agreement (pending registration) was in the nature of an "intangible asset" falling within the meaning of Sec. 32(1)(ii) of the Act, the same being distinguishable on facts would thus not assist its case. In fact, the ld. A.R had not brought to our notice any judicial pronouncement/order, wherein it has been held that the stamp duty expenses incurred on a lease agreement (pending registration) was to be construed as an "intangible asset" eligible for depreciation u/s 32(1)(ii) of the Act. In the backdrop of our aforesaid deliberations, we are unable to comprehend that as to on what basis the A.O while framing the assessment had vide his order passed u/s 143(3), dated 12.02.2015, therein allowed the assessee's claim for depreciation on the capitalised amount of stamp duty expenses (pending registration). Be that as it may, in our considered view, as the allowing of the assessee's claim for depreciation on the stamp duty expenses (pending registration) by the A.O cannot be held to a possible view in law, therefore, no infirmity arises from the order passed by the Pr. CIT u/s 263, dated 30.03.2017, observing, that the allowing of the assessee's claim for depreciation of Rs. 1,39,11,652/- i.e @25% on the amount of stamp duty deposited, had rendered the order passed by the A.O u/s 143(3), dated 12.02.2015, as erroneous insofar it was prejudicial to the interest of the revenue.

15. On the basis of our aforesaid observations, finding no infirmity in the order passed by the Pr. CIT u/s 263 of the Act, dated 30.03.2017, we uphold the same.

16. Before parting, we may herein deal with a procedural issue that though the hearing of the captioned appeal was concluded on 06.03.2020, however, this order is being pronounced after the expiry of 90 days from the date of conclusion of hearing. We find that Rule 34(5) of the Income-tax Appellate Tribunal Rules, 1962, which envisages the procedure for pronouncement of orders, provides as follows: (5) The pronouncement may be in any of the following manners:— (a) The Bench may pronounce the order immediately upon the conclusion of the hearing. (b) In case where the order is not pronounced immediately on the conclusion of the hearing, the Bench shall give a date for pronouncement. In a case where no date of pronouncement is given by the Bench, every endeavour shall be made by the Bench to pronounce the order within 60 days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of exceptional and extraordinary circumstances of the case, the Bench shall fix a future day for pronouncement of the order, and such date shall not ordinarily be a day beyond a further period of 30 days and due notice of the day so fixed shall be given on the notice board. As such, "ordinarily" the order on an appeal should be pronounced by the bench within no more than 90 days from the date of concluding the hearing. It is, however, important to note that the expression "ordinarily" has been used in the said rule itself. This rule was inserted as a result of directions of Hon'ble High Court in the case of Shivsagar Veg Restaurant Vs ACIT [(2009) 317 ITR 433 (Bom)] wherein it was inter alia, observed as under:

> "We, therefore, direct the President of the Appellate Tribunal to frame and lay down the guidelines in the similar lines as are laid down by the Apex Court in the case of Anil Rai (supra) and to issue appropriate administrative directions to all the benches of the Tribunal in that behalf. We hope and trust that suitable guidelines shall be framed and issued by the President of the Appellate Tribunal within shortest reasonable time and followed strictly by all the Benches of the Tribunal. In the meanwhile (emphasis, by underlining, supplied by us now), all the revisional and appellate authorities under the Income-tax Act are directed to decide matters heard by them within a period of three months from the date case is closed for judgment".

In the rule so framed, as a result of these directions, the expression "ordinarily" has been inserted in the requirement to pronounce the order within a period of 90 days. The question then arises whether or not the passing of this order, beyond a period of ninety days in the case before us was necessitated by any "extraordinary" circumstances.

17. We find that the aforesaid issue after exhaustive deliberations had been answered by a coordinate bench of the Tribunal viz. ITAT, Mumbai 'F' Bench in DCIT, Central Circle-3(2), Mumbai Vs. JSW Limited & Ors. [ITA No. 6264/Mum/18; dated 14/05/2020, wherein it was observed as under:

> "Let us in this light revert to the prevailing situation in the country. On 24th March, 2020, Hon'ble Prime Minister of India took the bold step of imposing a nationwide lockdown, for 21 days, to prevent the spread of Covid 19 epidemic, and this lockdown was extended from time to time. The epidemic situation being grave, there was not much of a relaxation in subsequent lockdowns also. In any case, there was unprecedented disruption of judicial wok all over the country. As a matter of fact, it has been such an unprecedented situation, causing disruption in the functioning of judicial machinery, that Hon'ble Supreme Court of India, in an unprecedented order in the history of India and vide order dated 6.5.2020 read with order dated 23.3.2020, extended the limitation to exclude not only this lockdown period but also a few more days prior to, and after, the lockdown by observing that "In case the limitation expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown". Hon'ble Bombay High Court, in an order dated 15th April 2020, has, besides extending the validity of all interim orders, has also observed that, "It is also clarified that while calculating time for disposal of matters made time-bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly", and also observed that "arrangement continued by an order dated 26th March 2020 till 30th April 2020 shall continue further till 15th June 2020". It has been an unprecedented situation not only in India but all over the world. Government of India has, vide notification dated 19th February 2020, taken the stand that, the coronavirus "should be considered a case of natural calamity and FMC (i.e. force majeure clause) maybe invoked, wherever considered appropriate, following the due procedure…". The term 'force majeure' has been defined in Black's Law Dictionary, as 'an event or effect that can be neither anticipated nor controlled' When such is the position, and it is officially so notified by the Government of India and the Covid-19 epidemic has been notified as a disaster under the National Disaster Management Act, 2005, and also in the light of the

discussions above, the period during which lockdown was in force can be anything but an "ordinary" period.

10. In the light of the above discussions, we are of the considered view that rather than taking a pedantic view of the rule requiring pronouncement of orders within 90 days, disregarding the important fact that the entire country was in lockdown, we should compute the period of 90 days by excluding at least the period during which the lockdown was in force. We must factor ground realities in mind while interpreting the time limit for the pronouncement of the order. Law is not brooding omnipotence in the sky. It is a pragmatic tool of the social order. The tenets of law being enacted on the basis of pragmatism, and that is how the law is required to interpreted. The interpretation so assigned by us is not only in consonance with the letter and spirit of rule 34(5) but is also a pragmatic approach at a time when a disaster, notified under the Disaster Management Act 2005, is causing unprecedented disruption in the functioning of our justice delivery system. Undoubtedly, in the case of Otters Club Vs DIT [(2017) 392 ITR 244 (Bom)], Hon'ble Bombay High Court did not approve an order being passed by the Tribunal beyond a period of 90 days, but then in the present situation Hon'ble Bombay High Court itself has, vide judgment dated 15th April 2020, held that directed "while calculating the time for disposal of matters made time bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly". The extraordinary steps taken suo motu by the Hon'ble High Court and Hon'ble Supreme Court also indicate that this period of lockdown cannot be treated as an ordinary period during which the normal time limits are to remain in force. In our considered view, even without the words "ordinarily", in the light of the above analysis of the legal position, the period during which lockout was in force is to excluded for the purpose of time limits set out in rule 34(5) of the Appellate Tribunal Rules, 1963. Viewed thus, the exception, to 90-day time-limit for pronouncement of orders, inherent in rule 34(5)(c), with respect to the pronouncement of orders within ninety days, clearly comes into play in the present case."

We have given a thoughtful consideration to the aforesaid observations of the tribunal and finding ourselves to be in agreement with the same, therein respectfully follow the same. As such, we are of the considered view that the period during which the lockout was in force shall stand excluded for the purpose of working out the time limit for pronouncement orders, as envisaged in Rule 34(5) of the Appellate Tribunal Rules, 1963.

18. Resultantly, the appeal filed by the assessee is dismissed in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

Sd/-	Sd/-
(S. Rifaur Rahman)	(Ravish Sood)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 31.07.2020
P.S Rohit

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**