

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

**BEFORE: SHRI MAHAVIR SINGH, VP  
&  
SHRI M.BALAGANESH, AM**

**ITA No.1964/Mum/2019  
(Assessment Year :2013-14)**

M/s. Grasim Industries Ltd. (Successor to Aditya Birla Nuvo Ltd.,) A- Wing, 2 <sup>nd</sup> Floor Aditya Birla Centre S.K.Ahira Marg, Worli Mumbai- 400 030	Vs.	Principal Commissioner of Income Tax, Central (1) Room No.1001, 10 <sup>th</sup> Floor, Old CGO Building Annexe M.K.Road, Mumbai - 400020
<b>PAN/GIR No.AAACI1747H</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Ronak Doshi and Ms. Gunjan Kakkad
Revenue by	Shri Brajendra Kumar, Shri Anadi Varma and Shri Micheal Jerald
<b>Date of Hearing</b>	<b>14/05/2021</b>
<b>Date of Pronouncement</b>	<b>24/05/2021</b>

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.1964/Mum/2019 for A.Y.2013-14 preferred by the order against the revision order of Pr. Commissioner of Income Tax, Central-1, Mumbai u/s.263 of the Act dated 27/03/2019 for the A.Y.2013-14.

2. Though the assessee had raised various grounds of appeal before us, we find that the effective issue to be decided in this appeal is as to whether the Id PCIT was justified in invoking revision jurisdiction u/s 263 of the Act in the facts and circumstances of the case.

3. We have heard the rival submissions and perused the materials available on record. We find that assessee is engaged in the business of manufacturing diversified products such as viscose filament yarn, carbon black, insulators, branded apparels and readymade garments. The assessee had filed its original return of income for the Asst Year 2013-14 on 28.11.2013 which was later revised on 30.3.2015 declaring total income of Rs 283,15,81,630/- under normal provisions of the Act and Rs 411,70,32,063/- u/s 115JB of the Act. The reasons for revising the return was duly explained by the assessee company vide its letter dated 15.11.2016 which has already been considered by the Id AO while framing the assessment. The Id AO completed the assessment u/s 143(3) of the Act on 9.2.2017 determining total income at Rs 366,01,24,600/- under normal provisions of the Act and Rs 440,88,34,676/- u/s 115JB of the Act. In the said computation of income in the assessment order, the Id AO had specifically mentioned that a sum of Rs 267,17,80,899/- for the Asst Year 2013-14 would be eligible to be carried forward for set off in subsequent years in bold letters. The assessee challenged the assessment by preferring an appeal before the learned Commissioner of Income Tax (Appeals) [ Id CITA] on the aggrieved issues.

4. We find that with effect from 1.7.2017, M/s Aditya Birla Nuvo Ltd (ABNL) amalgamated with Grasim Industries Ltd as per the scheme of arrangement which is approved by the Hon'ble National Company Law Tribunal (NCLT). Later the assessment framed by the Id AO on 9.2.2017

was sought to be revised by the Id PCIT on 6.3.2019 on the ground that the Id AO had allowed the claim of Long Term Capital Loss (LTCL) of Rs 267,17,80,899/- which ought not to have been allowed. We find that the assessee filed detailed submissions in the course of proceedings before the Id PCIT challenging the jurisdiction u/s 263 of the Act and also on merits of the issue in dispute. The Id PCIT rejected the contentions of the assessee and proceeded to pass an order u/s 263 of the Act setting aside the order of the Id AO as erroneous and prejudicial to the interest of the revenue with regard to the issue of allowability of LTCL to be carried forward to subsequent years on the ground that the Id AO had taken an incorrect view based on improper and incomplete appreciation and verification of facts and therefore unsustainable in law. We find that the Id PCIT also relied on Explanation 2(a) to section 263 of the Act which came into effect from 1.6.2015 to support his conclusion. Ultimately, the Id PCIT set aside the order of the Id AO as erroneous and prejudicial to the interest of the revenue with a direction to the Id AO to carry out complete verification of the legal tenability of the SPV created on 21.2.2013, the source of finances of SPV to acquire the shares of Aditya Birla Minacs Worldwide Limited (ABMWL), the valuation of shares of ABNL IT & ITES Ltd and sale of shares, if any, on 14.3.2013.

5. We find that the assessee in its return of income had claimed Long Term Capital loss (LTCL) arising on account of sale of shares of Aditya Birla Minacs Worldwide Ltd (ABMWL) to ABNL IT & ITES Ltd. These details were duly disclosed by the assessee in the return of income filed as well as in the computation of income filed together with its detailed workings. For the sake of convenience, the said workings are enclosed below:-

**(A) COMPUTATION OF LONG TERM / SHORT CAPITAL GAIN/LOSS ON SALE OF SHARES**

Sr. No.	Name of the investee company	Sold to	Date of purchase	Date of sale	No. of shares	Cost	Cost inflation Index in year of purchase	Cost Inflation Index in previous year in purchase	Index Cost of Acquisition	Cost of Acquisition (Short Term)	Sale consideration	Profit as per Books	Long Term Profit / (Loss) as per Income Tax
1	Aditya Birla Minacs Worldwide Limited	ABNL IT & ITES Limited (Note-1)	Various	14.03.2013	2,56,62,266	4,43,63,44,411	Various	852	(7,10,71,26,351)		4,43,63,44,411		(2,67,07,81,942)
2	Aditya Birla Housing Finance Limited	Aditya Birla Finance Limited (Note-2)	30.10.2009	30.11.2012	3,89,500	39,04,738	632	852	(52,63,982)		42,65,025	3,60,287	(9,98,957)
3	Pantaloons Fashion & Retail Limited	Indigold Trade and Services Limited (Note 3)	27.02.2010	01.06.2012	5,00,000	50,00,000	632	852	67,40,506		50,00,000		
	TOTAL					4,44,52,49,149			(7,10,56,49,829)		4,44,56,09,436	3,60,287	(2,67,17,80,899)

6. We find that in the course of assessment proceedings, the Id AO issued the following notices to the assessee :-

- a) Notice u/s 142(1) of the Act dated 8.12.2015 asking for basic details such as computation of income, audit report, annual report, 3CEB report etc.
- b) Notice u/s 142(1) of the Act dated 27.6.2016 again asking for copy of tax audit report, 3CEB report, computation of income, detailed note on nature and modus operandi of the business activities carried out by the assessee during the year under consideration and also to mention any change in activities when compared to previous years, among other general details such as bank statements, details of movable and immovable assets etc.
- c) Notice u/s 142(1) dated 8.11.2016 together with a questionnaire thereon, containing specific queries on various issues. In this questionnaire, a specific query was raised by the Id AO asking for details of Long Term Capital Loss / Gain in Question No. 40 thereon.

7. We find that the assessee had furnished replies before the Id AO in writing from time to time by collating all the queries that were raised in writing by way of questionnaire as well as the queries raised by the

Id AO at the time of personal hearing. With regard to the queries raised by the Id AO at the time of personal hearing, we find that the Id AR had enclosed the order sheet copies in pages 177 to 179 of the factual paper book filed before us. We find that the assessee had vide its letter dated 21.10.2016 (enclosed in page 125 of the factual paper book) furnished a detailed reply regarding details of long term capital loss on sale of shares of Aditya Birla Minacs Worldwide Limited (ABMWL) as under:-

***“Details of long term capital loss on sale of shares of Aditya Birla Minacs Worldwide Limited***

4.1. *The Assessee company was holding investment (99.60%) in the shares of Aditya Birla Minacs Worldwide Limited (‘Minacs India’), which was engaged into the business of Information Technology & Enabled Services (ITeS).*

4.2. *The IT & ITeS business of Minacs India was not performing as expected and therefore, due to commercial expediency, the Assessee Company wanted to exit from the ITeS business and it was in talks with the various investors.*

4.3. *In order to achieve the object of exiting from IT & ITeS business by divestment of shares of Minacs India, the Assessee Company incorporated another subsidiary company ABNL IT & ITES Ltd. (‘ABNL IT & ITES’) (Special Purpose Vehicle (SPV) on 21<sup>st</sup> February 2013 with the capital of Rs.5,00,000 held by the Assessee Company (95%) and ABNL Investment Ltd (5%), ABNL Investments Ltd is another 100% subsidiary of the Assessee Company.*

4.4. *On 14<sup>th</sup> March 2013, 2,56,62,266 shares of Minacs India were sold to ABNL IT & ITES Limited at cost of Rs.172.87 (Cost of Rs.443,63,44,411 divided by 2,56,62,266 shares) which was substantially higher than the networth of Minacs India. The book value of Minacs India as on 31 March 2013 (proximate to date of sale) is computed as under:-*

<i>Total Networth (Rs.in lakhs)</i>	<i>19,418.21</i>
<i>Total Equity share outstanding (nos. in lakhs)</i>	<i>257.26</i>
<i>Book Networth / share (Rs.) Approx.</i>	<i>75.48</i>

4.5. *The treatment of sale transaction given by the Assessee Company as per books of accounts and as per tax is as follow:*

<i>Particulars</i>	<i>As per Books of Accounts</i>	<i>As per Tax</i>
<i>Sale Consideration</i>	<i>443,63,44,411</i>	<i>443,63,44,411</i>
<i>Less: Cost of Acquisition / Indexed Cost of Acquisition</i>	<i>(443,63,44,411)</i>	<i>(710,71,26,353)</i>
<i>Book (Loss)/Capital (Loss)</i>	<i>Nil</i>	<i>(267,07,81,942)</i>

4.6. *During the course of our hearing, your goodself has asked us to submit the details of loss on sale of shares of Aditya Birla Minacs Worldwide Limited.*

4.7. *In this regard we submit that as per the provision of Section 47(iv) of the Income Tax Act 1961 ('the Act') any transfer of a capital asset by a company to its wholly-owned India subsidiary company shall not be regarded as transfer for the purpose of capital gain tax.*

4.8. *Accordingly, your goodself would observe that the provision of Section 47(iv) covers transfer to an Indian subsidiary company which is wholly (100% share capital) owned by the transferer company. In the instant case, the Assessee company does not own whole of the shares capital of ABNL IT & ITES. It only owns 95% share capital of ABNL IT & ITES and the balance 5% share capital is owned by a separate and independent legal entity viz., ABNL Investments.*

4.9. *Accordingly, in view of the above, the Assessee company submits that provisions of Section 47(iv) of the Act does not apply in the instant case.*

4.10. *With regard to the above transaction, the Assessee Company submits that provisions of Section 47(iv) of the Act does not apply in the instant case.*

*(emphasis supplied by us herein)*

- *Computation of long term capital loss for A.Y.2013-14 carried forward by the Assessee Company (Annexure 5).*
- *Copy of audited financial statements for the year ended 31 March 2016 of Minacs India (Annexure 6).*

4.11. *Further, during FY 14-15, the object of incorporating the SPV was achieved as SPV divested the stake in Minacs India to certain investors.*

**Aditya Birla Minacs IT Services Ltd (PSI Data Systems Ltd.) Company stands merged with Aditya Birla Minacs Worldwide Ltd. w.e.f. F.Y.2011-12**

Years of Purchase	Nos. of Shares	Cost as per books	Cost Inflation Index in the year of purchase	Indexed Cost (F.Y.) 12-13=852
2001-02	5,311,669	1,002,853,083	426	2,005,706,166
2004-05	3,440	126,282	480	224,151
2008-09	463,240	33,024,192	582	48,344,693
2009-10	482,686	28,438,503	632	38,337,982
2010-11	200,367	12,002,161	711	14,382,336
	<b>6,461,402</b>	<b>1,076,444,221</b>	<b>A</b>	<b>2,106,995,328</b>

**Aditya Birla Minacs Worldwide Ltd., (Transworks Information Services Ltd)**

Year of purchase	Nos of Shares	Cost	Cost Inflation Index in the year of purchase	Indexed Cost (F.Y.12-13=852)
2003-04	15,738,378	687,787,270	463	1,265,647,417
2006-07	5,000,000	1,500,000,000	519	2,462,427,746
2011-12	4,437,974,852	1,170,973,274	785	1,270,916,216
2012-13*	-	1,139,646	852	1,139,646
		<b>3,359,900,190</b>	<b>B</b>	<b>5,000,131,024</b>
<b>TOTAL</b>			<b>A + B</b>	<b>7,107,126,353</b>

Sale Consideration	<b>4,436,344,411.00</b>
Less: Indexed Cost of Acquisition	<b>A+B (7,107,126,352.73)</b>
Long term Capital Loss on sale of Aditya Birla Minas Worldwide Ltd.,	<b>(2,670,781,942)</b>

7.1. We find that again the assessee vide its reply letter dated 15.11.2016 had specifically again replied in response to question no. 40 of questionnaire dated 8.11.2016 had replied regarding details of long term capital loss as under:-

“Details of Long term Capital Gains – Refer point No.40 of your letter

*During the year under assessment, the Assessee company has incurred Long term capital loss of Rs.267,07,81,942/- on sale of 2,56,62,266 shares of Aditya Birla Minacs Worldwide Limited to ABNL IT & ITES Limited and also has incurred a Long Term Capital loss of Rs.9,98,957/-*

*on sale of 389,500 shares of Aditya Birla Housing Finance Limited to Aditya Birla Finance Limited. The working is attached as Annexure-16.*

*Further, the Assessee Company has sold shares of Pantaloons Fashion & Retail Limited at cost of its wholly owned subsidiary Indigold Trade and Services Limited which is not regarded as transfer as per provisions of Section 47(iv) of Income Tax Act, 1961, hence no capital gain / loss has been claimed.*

7.2. We further find that on personal hearing conducted on 6.12.2016, the Id AO had specifically sought an explanation from the assessee regarding the allowability of Long Term Capital Loss . This fact is evident from the order sheet noting enclosed in Page 179 of the factual paper book filed before us. To this, the assessee had relied on earlier submissions made before the Id AO which fact is also mentioned in the order sheet noting recorded on 15.12.2016 enclosed in Page 179 of the factual paper book filed before us.

8. One more excruciating fact to be considered in the instant appeal is that the Id AO vide letter dated 3.7.2017 had addressed a letter to The Deputy Director, RA-1, ITRA, C-25, Audit Bhavan, Bandra-Kurla Complex, Bandra(E ) , Mumbai – 400051 objecting to the audit objection raised by the audit party . In this letter, the Id AO had actually accepted to the entire contentions of the assessee by placing all facts and legal points thereon before the Audit Party. For the sake of convenience, the said letter dated 3.7.2017 addressed by the Id AO to the audit party is reproduced hereunder:-

*“Kindly refer to the above.*

*The Revenue Audit has raised audit objection as under:*

*“As per section 47(iv) of the Act, any transfer of capital asset by a company to its Indian subsidiary company is not regarded as transfer if the parent company or its nominees hold the whole of the share capital of the subsidiary company.*

*In the instant case, the assessment was completed under section 143(3) r.w.s. 144C of the Act determining taxable income at Rs.3,66,01,24,600. It was seen that the assessee claimed and was allowed Long Term Capital loss of Rs.2,67,17,80,899 to be carried forward to future years. This LTCL of Rs.2,67,17,80,899 included LTCL of Rs.2,67,07,81,942/- on sale of 25662266 shares of Aditya Birla Minacs Worldwide Limited to ABNL IT & ITES Ltd.,*

*It was seen that the transferee ABNL IT & ITES Ltd., was a 100 percent subsidiary of the assessee. As the said transaction is not to be treated as transfer under section 47, the allowance of Long Term Capital Loss was not in order.*

*By generating LTCL in violation of the Act, the assessee would be able to reduce future LTCG tax liability by this action. Non-disallowance of irregular claim of LTCL on account of transfer of assets to its subsidiaries resulted in excess carry forward of LTCL by Rs.2,67,07,81,942 with a consequent short levy of tax of Rs.57,76,90,134 (potential) ”*

*The audit objection is not acceptable for the following reasons:*

*On 14 March 2013, the Assessee sold 2,56,62,266 shares of Aditya Birla Minacs Worldwide Limited to ABNL IT & ITES Limited at a tax loss of Rs.2,67,07,81,942/-.*

*ABNL IT & ITES Ltd is not a wholly owned subsidiary of the Assessee Company. The Assessee, in the course of assessment proceeding was asked for and assessee filed details vide letter dated 21<sup>st</sup> October 2016 which I have already gone through and only after proper perusal allowed such claim. On the date of such transaction, ABNL held 95% shares of ABNL IT & ITES Limited and 5% was held by ABNL Investment Ltd., Accordingly, the observation in the Audit note is factually incorrect. In this regard, you may also please refer to the attached audited Accounts of ABNL IT & ITES Ltd for Financial Year 2012-13, as Annexure-1.*

*Accordingly, the observation being factually not correct, there is no undue benefit to the Assessee by availing the carry forward of Long Term Capital Loss since the same is not hit by the provisions of Section 47(iv) of the Act.*

*In view of the above audit objection is not acceptable and the same may be treated as settled.”*

8.1. We find that the Id AR even placed on record the copy of audit objection raised by the audit party in Page 184 of the factual paper book filed before us.

*“As per Section 47(iv) of the Act, any transfer of capital asset by a company to its Indian subsidiary company is not regarded as transfer of the parent company or its nominees hold the whole of the share capital of the subsidiary company.*

*In the instant case, the assessment was completed under section 143(3) r.w.s. 144C of the Act determining taxable income at Rs.3,66,01,24,600. It was seen that the assessee claimed and was allowed Long Term Capital loss of Rs.2,67,17,80,899/- to be carried forward to future years. This LTCL of Rs.2,67,17,80,899/- included LTCL of Rs.2,67,07,81,942 on sale of 25662266 shares of Aditya Birla Minacs Worldwide Limited to ABNL IT & ITES Ltd.,*

*It was seen that the transferee ABNL IT & ITES Ltd., was a 100 percent subsidiary of the assessee. As the said transaction is not to be treated as transfer under section 47, the allowance of Long Term Capital Loss was not in order.*

*By generating LTCL in violation of the Act, the assessee would be able to reduce future LTCG tax liability by this action. Non disallowance of the irregular claim of LTCL on account of transfer of assets to its subsidiaries resulted in excess carry forward of LTCL by Rs.2,67,07,81,942 with a consequent short levy of tax of Rs.57,76,90,134/- (potential).*

*The Department did not accept the audit observation stating that ABNL IT & ITES Ltd., is not a wholly owned subsidiary of the Assessee Company. The Assessee in the course of assessment proceeding was asked for and assessee filed details vide letter dated 21<sup>st</sup> October 2016 which I have already gone through and only after proper perusal allowed such claim. On the date of such transaction, ABNL held 95% shares of ABNL IT & ITES Limited and 5% was held by ABNL Investment Ltd., Accordingly, the observation in the Audit note is factually incorrect.*

*The reply of the Department was found not acceptable. The Assessing Officer, by accepting that the assessee had claimed that ABNL held 95% shares of ABNL IT & ITES Limited and 5% was held by ABNL Investment Ltd should have simultaneously started penalty proceeding under section 271(1)(c) of the Act against the assessee for misrepresentation of fact. At the same time, kindly note that this was a deliberate attempt on part of assessee to hoodwink revenue as it was seen that it was claiming section 47 application for sale of Pantaloons Fashion and Retails Ltd to Indigold Trade and Services Ltd during the same AY. It was seen from the Annual Report of 2012-13 (AY 2013-14 relevant to the para) page No.149 of the assessee that ABNL IT & ITES Limited was 100 percent subsidiary of the Assessee. Even though the amount involved huge tax impact, the AO did not check the records properly. Further, from the page no.172 of the*

*Annual Report for 2012-13 (relevant to AY 2013-14), it was clear that ABNL IT & ITES Limited became 100 percent subsidiary from 23<sup>rd</sup> February 2013 while as per the submission of the assessee, the date of sale of shares was 14<sup>th</sup> March 2013. Thus, on the date of transfer of share, the assessee was holding 100 percent shares of ABNL IT & ITES Limited. Thus, this is a fit case for initiation of penalty under section 271(1)(c) for misleading the Assessing Officer unless the AO thinks contrary to it. In the light of above, the Department is requested to reconsider its stand.”*

8.2. The aforesaid audit objection of the Revenue Audit Department goes to prove that the Revenue Audit Department apparently had not agreed with the view taken by the Id AO. Hence there exists two views on the same subject within the Income Tax Department itself. There is absolutely no incorrect assumption of fact or incorrect application of law by the Id AO. Hence it could be safely concluded that the Id AO had taken one of the possible view. Once a possible view has been taken by the Id AO, his order cannot be termed as erroneous warranting revision proceedings u/s 263 of the Act. In any case, we find that there is no dispute that the Revenue Audit Party had indeed raised an objection on the very same subject of allowability of Long Term Capital loss and that the Id AO had not accepted the same. This is evident from the detailed reply given by the Id AO to the Revenue Audit Party vide his letter dated 3.7.2017 reproduced supra. We find that the Id PCIT had invoked revision jurisdiction u/s 263 of the Act on the very same point of allowability of LTCL. Hence it could be safely concluded that the revision proceedings has been invoked by the Id PCIT u/s 263 of the Act based on audit objection, which is nothing but borrowed satisfaction. Hence the said revision proceedings u/s 263 of the Act need to be construed as bad in law. Reliance in this regard has been rightly placed by the Id AR on the decision of *Hon'ble Jurisdictional High Court in the case of CIT vs Maharashtra Hybrid Seeds Co. Ltd reported in 102 taxmann.com 48*

(Bom). The relevant operative portion of the said judgement is reproduced hereunder:-

*“9. As rightly held by the Tribunal, this note firstly shows that all the explanations and arguments of the Assessee have been considered by the Assessing Officer and secondly that the action taken under Section 263 is only on the basis of the audit party's note or report, who it would appear, ultimately did not approve of the Assessing Officer's view regarding the allowability of the deduction. Admittedly, the CIT has not referred to any audit objection but in the light of the note, the Tribunal held that it would be a fair inference that his action under Section 263 was consequent upon the audit objection. Be that as it may, this office note clearly shows that the Assessing Officer had taken all explanations and arguments of the Assessee into consideration before allowing deduction. This being the case, the CIT could not have merely substituted his own views for that of the Assessing Officer by invoking Section 263 of the I. T. Act.*

*10. In this factual backdrop, therefore, we have no hesitation in answering the substantial question of law referred to and reproduced by us earlier in the affirmative and in favour of the Assessee and against the Revenue.”*

9. We hold that a possible view has been taken by the Id AO in the matter and merely because the Id PCIT is of a different view on the same issue, he cannot resort to invoke revision proceedings u/s 263 of the Act. This is only a case wherein the Id PCIT is trying to substitute his view in lieu of a possible view already taken by the Id AO on the impugned issue on the allowability of LTCL. Reliance in this regard is placed on the decisions of *Hon'ble Jurisdictional High Court in the case of Gabriel India Ltd reported in 203 ITR 108 (Bom) and in the case of Nirav Modi reported in 390 ITR 292 (Bom)*. It is also pertinent to note that the Special Leave Petition (SLP) preferred by the Revenue before the Hon'ble Supreme Court against the judgement of Nirav Modi was dismissed in 77 taxmann.com 15 (SC).

10. We also find that the Explanation 2 to section 263 of the Act , which was heavily relied upon by the Id DR before us, would not apply

to the facts of the instant case as full enquiry was already made by the Id AO in the original assessment proceedings itself. Infact the stand of the assessee was accepted by the Id AO in the assessment proceedings and also before the Revenue Audit Party which is evident from the reply to audit objection as reproduced supra. Reliance in this regard is placed on the following decisions, the operative portion are not reproduced for the sake of brevity:-

- a) Decision of Co-ordinate Bench of this Tribunal in the case of Narayan Tatu Rane vs ITO reported in 70 taxmann.com 227 (Mumbai) ( Paras 19 & 20)*
- b) Decision of Co-ordinate Bench of Delhi Tribunal in the case of Hero Honda Motors Ltd vs DCIT in ITA No. 2148/Del/2009 dated 2.2.2017 (Paras 14 to 17)*

11. In view of the aforesaid elaborate observations and respectfully following the various judicial precedents relied upon hereinabove, we hold that –

a) Adequate enquiries were indeed carried out by the Id AO in the original assessment proceedings and hence the Id PCIT was not justified in invoking revisionary jurisdiction u/s 263 of the Act ;

b) A possible view has been taken by the Id AO on the issue of LTCL on the facts of the case and also by placing reliance on the available case laws on the subject and hence the Id PCIT was not justified in invoking revisionary jurisdiction u/s 263 of the Act merely because he is of a completely different view and opinion on the issue of allowability of LTCL to be carried forward to subsequent years;

c) The Id AO had defended his original assessment order before the Revenue Audit Party by accepting the contentions of the assessee and by

stating that there was no misrepresentation of facts by the assessee. The evidences in this regard are already on record and already reproduced elsewhere in this order. Hence it could be safely concluded that the revision proceedings u/s 263 of the Act had been apparently triggered only based on borrowed satisfaction i.e Audit Objection and not based on independent application of mind by the Id PCIT. Infact the show cause notice issued by the Id PCIT u/s 263 of the Act also uses the same language used by the Revenue Audit Party in its Audit Objection. Hence revision proceedings could not be invoked by the Id PCIT based on borrowed satisfaction.

12. Since the revision order passed by the Id PCIT u/s 263 of the Act is hereby directed to be quashed, the other arguments advanced by the Id AR on the applicability of provisions of section 170(2) of the Act and on merits of the case need not be gone into and they are left open.

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

Order pronounced on 24/05/2021 by way of proper mentioning in the notice board.

**Sd/-**  
**(MAHAVIR SINGH)**  
**VICE PRESIDENT**

**Sd/-**  
**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 24/05/2021  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**