IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 126 OF 2024

Commissioner of Income Tax (Exemptions), Mumbai ...Appellant
Versus
Impact Foundation (India) ...Respondent

Mr. Pritish Chatterjee for the Appellant.

Mr. Dharmesh Shah a/w Dhaval Shah for the Respondent.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

RESERVED DATE: 24 APRIL 2026
PRONOUNCED ON: 04 MAY 2026

JUDGMENT (PER AARTI SATHE, J.):-

1. This Appeal has been filed by the Appellant-Revenue under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), challenging the order dated 2nd January 2023 (hereinafter referred to as the "impugned order") passed by the Income Tax Appellate Tribunal (hereinafter referred to as the "ITAT"), allowing the Respondent-Assessee's Appeal, which was filed against the order dated 24th March 2022 passed by the Commissioner of Income Tax (Exemptions), Mumbai (hereinafter referred to as the "CIT (Exemptions), Mumbai"), thereby holding that the order passed by the CIT (Exemptions), Mumbai under Section 263 of the Act was not sustainable. The assessment year (AY) in question is AY 2017-2018. By the present Appeal, the Appellant-Revenue has raised the following re-framed questions of law:-

"1. Whether the Hon'ble ITAT was justified in allowing the appeal, when the order revised did not make any inquiries and verification with regard to claim of utilization of accumulated income of Rs 6 crores under section 11(2) thereby rendering the assessment order erroneous and prejudicial to the interest of revenue?

2. Whether the Hon'ble ITAT was justified in setting aside the order passed under section 263 of Income Tax Act without considering that Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. (243 ITR 83) has clearly held that the Commissioner of Income Tax is within his jurisdiction to set aside the assessment order if it is passed without examination of the relevant details or without application of mind and both these criteria are fulfilled in the present case?

3. Whether the Hon'ble Tribunal was justified in setting aside the order revising under section 263 when Hon'ble Bombay High Court in the case of Sesa Starlite Ltd Vs Commissioner of Income Tax 430 ITR 121 (Bom) held that whatever be the status of the queries, non-consideration and consequently, non-application of mind to the material on record is enough to uphold the order u/s 263?"

2. Briefly, the facts are as follows:-

i. The Respondent-Assessee is a non-profit company incorporated under Section 25 of the Companies Act, 1956 (charitable institution) registered under Section 12AA of the Act, and is an organization formed as an NGO for helping organizations to improve implementation of programs which help women and children in education, health, and livelihoods. For the relevant AY, the Respondent-Assessee e-filed its Return of Income Tax (ROI) on 4th October 2017, declaring total income at Nil. The Respondent-Assessee, being a charitable organization and claiming exemption under Section 12AA of the Act, also claimed benefit under Section 80G in order No. DIT(E)/MC/80G/116/2008/2008-09 dated 13th October 2008, being also registered with the Charitable Commissioner, Mumbai. The Respondent-Assessee had also claimed an exemption under Section 11 of the Act.

ii. Post filing of the ROI, the Respondent-Assessee's case was selected for scrutiny, and notices under Sections 143(2) and 142(1) dated 11th August 2018 were issued, and further notices under Section 142 (1) along with annexures were issued from time to time and served on the Respondent-Assessee. The Respondent-Assessee, in response to the aforesaid notices, furnished details electronically through its e-filing account on incometaxindiaefiling.gov.in from time to time.

iii. After examining the details as submitted by the Respondent-Assessee in response to the aforesaid notices, and particularly the expenditure incurred for the objects of the trust of the Respondent-Assessee as detailed in the income and expenditure account, an assessment order date 12th December 2019 under Section 143(3) of the Act was passed by the Assessing Officer (AO), assessing the Respondent-Assessee's income at Nil. Subsequent to the passing of the assessment order dated 12th December 2019 under Section 143(3) of the Act, the CIT (Exemptions), Mumbai initiated revisionary proceedings under Section 263 of the Act. The CIT (Exemptions), sought to revise the said assessment order on the basis that on verification of the assessment records, he was of the *prima facie* view that the assessment order passed under Section 143(3) of the Act on 12th December 2019 was erroneous insofar as it was prejudicial to the interest of the Revenue within the meaning of Section 263 of the Act. The CIT (Exemptions), formed the aforesaid *prima facie* belief on the reason that on verification of the assessment records, it was observed by him that from Schedule I of the ROI filed for the relevant AY, the Respondent-Assessee had claimed utilization of Rs. 6 crores from

the accumulation under Section 11(2) of the Act of Rs. 14.51 crores for AY 2016-2017. It was further observed by the CIT (Exemptions), that during the assessment proceedings, the Respondent-Assessee had neither submitted the details, nor furnished any documentary evidence for the utilization of the aforesaid substantial amount of Rs. 6 crores. The CIT (Exemptions) was therefore of the view that the AO had not verified the issue and proceeded to accept the Respondent-Assessee's claim, and on account of the non-verification of the utilization of Rs. 6 crores, which was out of the accumulation for the AY 2016-17, it was his *prima facie* view that the assessment order was erroneous insofar as it was prejudicial to the interest of the Revenue within the meaning of Section 263 of the Act. Prior to the initiation of the revisionary proceedings under Section 263 of the Act, a show-cause notice dated 12th January 2022 was issued, which reads as follows:

> "2. On verification and careful examination of the assessment records for the A.Y 2017-18 in your case, wherein assessment was completed under section 143(3) of the IT Act, 1961 on 12.12.2019, lam of the prima facie view that the order passed by DCIT(E) Cir. 1(1), Mumbai (hereinafter 'the Assessing Officer' or 'the AO') is erroneous in so far as it is prejudicial to the interest of revenue, in view of the following:
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> i) In this case, return declaring total income at Rs.Nil for A.Y. 2017-18 was filed on 04.10.2017. The case was selected for scrutiny and the assessment completed u/s. 143(3) vide order dated 12.12.2019 determining total income at Rs.Nil
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> ii) On verification of the assessment records of A. Y. 2017-18, it is observed from Schedule lot the return of income filed for the A.Y. 2017-18 that the assessee had claimed utilization (during FY 2016-17 relevant to A Y 2017-18) of Rs. 6,00,00,000/- from the accumulation u/s. 11(2) of IT Act of Rs 1451,00,000/- for the A.Y. 2016-17 During the course of assessment proceedings, the assessee has neither submitted details nor documentary evidence for above mentioned utilization Further, AO has allowed the assessee's claim It is pertinent to mention here that as per balance sheet of AY 2017-18 there is no major addition in schedule of moveable and immoveable

assets of the assessee. Further, assessee has not provided any documentary evidence for utilization of Rs.6 crore as claimed in A.Y. 2017-18.

iii) In view of the above, amount of Rs.6,00,00,000/-, which was shown as utilized during the financial year 2016-17 relevant to A. Y. 2017-18 must have been disallowed in current

year, i.e., A.Y. 2017-18, as the assessee has failed to provide requisite documentary evidences. Further, the issue was not verified during the course of assessment proceedings.

The AO has passed order without the basic verification of the above facts stated above and therefore the order is prejudicial to the interest of revenue.

3. In view of the above, may I request you to show cause why the assessment order made u/s. 143(3) of the Act dated 12.12.2019 should not be set aside by invoking the provisions of Section 263 of the Act with appropriate directions to the AO. You are accorded an opportunity to furnish a written response on/The electronically through your e-filing account in incometaxindia.gov.in on or before 20.01.2022. You may further note that if nothing is heard from you at the specified date, it will be presumed that you have no submissions to make and order will be passed accordingly on the information available on the record."

iv. In response to the aforesaid show-cause notice issued under Section 263 of the Act, the Respondent-Assessee filed legal submissions dated 14th February 2022 and 11th March 2022, wherein the Respondent-Assessee submitted that the assessment order dated 12th December 2019 was neither erroneous, nor prejudicial to the interest of the Revenue, and sought to place reliance on several judicial pronouncements on the said issue. A personal hearing was also accorded to the Respondent-Assessee on 8th March 2022, and post that further factual submissions were filed by the Respondent Assessee, wherein details of the accumulation of Rs. 6 crores under Section 11 of the Act, along with the utilization thereof in AY 2017-18, was provided.

v. The Respondent-Assessee categorically submitted that out of the accumulation of Rs. 14.51 crores in AY 2016-17, an amount of Rs. 6 crores had

been utilized during the year, and a breakup of the utilization was provided. The breakup of the utilization as provided by the Respondent-Assessee is reproduced below for convenience:-

Sr. No.	Objects for which Application made	Amount
1.	Urban as well as rural Sanitation (Sr. No. 1of Board Resolution dated 29 September 2016)	5,28,52,691
2.	For strengthening civil society in India and enhancing management capacities of Indian NGOs, etc. (Sr. No. 6 of Board Resolution dated 29 September 2016)	71,47,309
	Total	6,00,00,000

vi. However, the CIT (Exemptions), without accepting the contentions as raised by the Respondent-Assessee invoked the provisions of Explanation 2 to Section 263 of the Act, which were incorporated vby Finance Act, 2015, which were brought into effect from 1st June 2015, and sought to revise the assessment order dated 12th December 2019 on the ground that the details as submitted by the Respondent-Assessee in respect of the utilization of Rs. 6 Crores out of the accumulated amount of Rs. 14.51 crores for the earlier AY 2016-17 were not verified by the AO during the assessment proceedings. Hence the CIT (Exemptions), was of the view that it was incumbent on the AO to have called for

the break up details and also have examined the supporting documents that substantiated the above utilization by the Respondent-Assessee. The CIT (Exemptions), also went on to hold that the AO was expected to verify whether the utilization was as per the Memorandum of Association of the Respondent-Assessee, and the AO was also expected to have made test check third party verifications in order to satisfy himself as to the correctness of the Respondent-Assessee's claim. The CIT (Exemptions), was therefore of the view that since this exercise of verification was not done by the AO, the assessment order dated 12th December 2019 was an order which was erroneous and prejudicial to the interest of Revenue within the meaning of Section 263 of the Act, and hence the CIT (Exemptions), passed an order dated 24th March 2022 setting aside the assessment order dated 12th December 2019 ,with a direction to the AO to re-frame the assessment order as below:-

(a) Obtain complete details of the utilisation of the amount of Rs.6,00,00.000/-.

(b) Obtain supporting evidences confirming the same.

(c) Examine whether the utilisation is in sync with the object/MOA of the assessee foundation.

(d) Conduct third party verification based on the details submitted as deemed appropriate

vii. Being aggrieved by the order passed by the CIT (Exemptions), the Respondent-Assessee preferred an Appeal before the ITAT and contended that the

CIT (Exemptions), had erred in passing the order dated 24th March 2022 under Section 263 of the Act inasmuch as the original assessment order passed under Section 143(3) of the Act dated 12th December 2019 was passed after conducting the requisite enquiry/verification and on proper application of mind, and thus was not an order which was erroneous and prejudicial to the interest of the Revenue warranting the exercise of jurisdiction under Section 263 of the Act.

viii. The ITAT by the impugned order dated 2nd January 2023, allowed the Appeal filed by the Respondent-Assessee, on the ground that the order passed by the CIT (Exemptions), was incorrect inasmuch as the assessment order dated 12th December 2019 was not erroneous or prejudicial to the interest of the Revenue. Referring to the decision of this Court in the case of **Grasim Industries Vs. Commissioner of Income Tax**[1], ITAT examined the scope of revision proceedings under Section 263 of the Act, and held that the CIT (Exemptions), could not invoke his power of revision under Section 263 of the Act, if the AO had conducted enquiries and applied his mind, and has taken a possible view of the matter.

ix. The ITAT accepted the contention of the Respondent-Assessee that prior to the passing of the assessment order dated 12th December 2019, the AO had made enquiries, carrying out verification of the claim of the Respondent-Assessee, and had taken the view that the utilization of the funds out of the accumulated funds was rightly done by the Respondent-Assessee, and had thus formed a plausible view and assessed the income of the Respondent-Assessee at Nil.

1 [2010] 321 ITR 92 (Bombay)

x. The ITAT further held that the CIT (Exemptions), cannot initiate proceedings under Section 263 of the Act with a view to start fishing and roving enquiries in matters or orders which are already concluded, unless he is able to hold that the AO's view on the issue was unsustainable in law. The ITAT also noted that during the assessment proceedings, the AO had asked specific queries on the details of the accumulation of funds, and copies of replies were filed by the Respondent-Assessee, wherein the Respondent-Assessee had furnished the details of accumulation of income made under Section 11(2) of the Act for the past six years, along with the details of the utilization. The Respondent-Assessee had specifically stated that the amount of Rs. 6 crores had been utilized for the specific purposes of accumulation, and further that it could be seen that the AO had in fact made enquiries about the accumulation of income and utilization thereof, and hence the same was not a case of lack of enquiry on the part of the AO rendering the assessment order as erroneous and prejudicial to the interest of the Revenue.

xi. The ITAT further went on to hold that the CIT (Exemptions), Mumbai could not invoke the provisions of Section 263 of the Act when the AO had enquired about the issue, and that too without pointing out the error in the assessment order, and once a possible view was taken by the AO, the same could not be discarded by the CIT (Exemptions), Mumbai under the garb of Section 263 of the Act. The ITAT also referred to the provisions of Section 11(2) and 11(3) of the Act to hold that in the facts of the present case, the aforesaid Section is not attracted, inasmuch as on a perusal of Form-10, it was apparent that the accumulated amount in AY 2016-17, which was to the tune of Rs.14.51 crores,

which could be accumulated up to 31st March 2021 i.e. AY 2021-22, and if at all, the non-utilization of the accumulated amount thereof as per clause (c) of Section 11(3) would attract taxation in the previous year immediately following the expiry of the period, i.e., in AY 2022-23. The ITAT noted that this was not the case in the present facts of non-utilization of the amount accumulated in AY 2016-17, however, the fault pointed out by the CIT (Exemptions), Mumbai was regarding the issue of non-examination by the AO of Rs. 6 crores expended by the Respondent-Assessee in the relevant AY, out of the accumulated amount of Rs. 14.51 crores, in which situation clause (a) or (d) of Section 11(3) would be applicable. Section 11(3)(a) of the Act specifies that if the amount so accumulated is applied to purposes other than charitable or religious purposes, or ceases to be accumulated or set apart for application thereto, then in such event, the benefit of the aforesaid provision cannot be given to the Assessee, and the amount so applied shall be deemed to be the income of the previous year in which it is so applied or as per Section 11(3)(d) of the Act, if the amount is credited or paid to any trust or institution as stated therein then, the amount so credited or paid to the trust or institution shall be deemed to be the income of the assessee of the previous year in which it is so credited/paid. This was not the factual situation in the present case, and therefore the ITAT came to the conclusion that once the AO had conducted the enquiries and taken a possible view insofar as the utilization of Rs. 6 crores was concerned, the revision proceedings by Appellant-Revenue were unsustainable. The ITAT came to the conclusion that the view taken by the AO is plausible. The relevant paragraphs of the ITAT order are reproduced below:-

8. In the instant case, it has been brought to our notice that the AO during assessment proceedings has asked specific queries on the details of accumulation of funds. The copies of replies filed by the assessee are given in the paper book. Vide letter dated 30-01-2019, the assessee has furnished the details of accumulation of Sincome made u/s 11(2) of the Act for the past 6 years along with details of utilization. The same was annexed as Annexure 12 along with the copy of Form 10 and board resolution for the subject years. The details are available at pages 14 and 15 of the paper book. The assessee has specifically stated that the amount of Rs.6.00 crores have been utilized for the specified purposes of accumulation. Further, vide letter dated 3'd December, 2019, the assessee has again stated that the above said details have been furnished through the earlier letter. Accordingly, it can be seen that the AO has, in fact, made inquiries about the accumulation of income and utilization thereof. So it cannot be said in the facts and circumstances of the case that it is a case of no enquiry but at best the Ld. CIT(A) can say it is lack of enquiry in the manner he thought the enquiry ought to have been conducted. But we are afraid that cannot confer jurisdiction to invoke revisional jurisdiction u/s 263 of the Act unless the Ld. CIT(E) himself conducts enquiry on the issue and recording a finding which would show that AO's view despite enquiry was erroneous/unsustainable in law.

9. And we note that even before Ld CIT(E), the assessee has furnished the specific details of utilization of funds. The case of the Ld CIT(E) is that the AO has failed to examine the break-up of the details of the said expenditure in order to satisfy himself that the said amount of Rs.6.00 crores was indeed used for the purpose for which it was accumulated. However, the question is whether the Ld CIT(E) can hold such a view when the AO has enquired about the issue and that too without pointing out the error, if any, in the assessment order in the revision proceeding u/s 263 of the Act?. According to us, the Ld. CIT(E) cannot do so, because AO has enquired about it and in such an event the Ld. CIT(E) himself has to enquire about the issue and point out that AO's view was erroneous/un-sustainable in law.

10. In this context, it would be gainful to refer to case-law in the case of Gabriel India Ltd. (supra) wherein their Lordship answered the question as to when an order can be termed as "erroneous" which was explained as under:-

> "From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an income tax officer acting in accordance with the law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order, unless the decision is held to be erroneous. Cases may be visualised where the Income tax officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of records, may

be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income tax officer. That would not vest the Commissioner with power to examine the accounts and determine the income himself at a higher figure. It is because the Income tax officer has exercised the quasi judicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion.... There must be some prima facie material on record to show that the tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed"

In the case of Nagesh Knitwears P Ltd (2012)(345 ITR 135), the Hon'ble Delhi High Court has elucidated and explained the scope of the provisions of sec.- 263 of the Act and the same has been extracted by the Delhi High court in the case of CIT Vs. Goetze (India) Ltd (361 ITR 505) as under:-

"Thus, in cases of wrong opinion or finding on merits, the Commissioner of Income tax has to come to the conclusion and himself decide that the order is erroneous, by conducting necessary enquiry, if required and necessary, before the order under section 263 is passed. In such cases, the order of the Assessing Officer will be erroneous because the order is not sustainable in law and the said finding must be recorded. The Commissioner of Income tax cannot remand the matter to the Assessing Officer to decide whether the findings recorded are erroneous. In cases where there is inadequate enquiry but not lack of enquiry, again the Commissioner of Income tax must give and record a finding that the order/inquiry made is erroneous. This can happen if an enquiry and verification is conducted by the Commissioner of Income tax and he is able to establish and show the error or mistake made by the Assessing officer, making the order unstainable in law. In some cases possibly though rarely, the Commissioner of Income tax can also show and establish that the facts un record or inferences drawn from facts on record per se justified and mandated further enquiry or investigation but the Assessing officer had erroneously not undertaken the same. However, the said finding must be clear, unambiguous and not debatable. The matter cannot be remitted for a fresh decision to the Assessing Officer to conduct further enquiries without a finding that the order is erroneous. Finding that the order is erroneous is a condition or requirement which must be satisfied for exercise of jurisdiction under section 263 of the Act. In such matters, to remand the matter/ssie to the Assessing Officer would imply and mean the Commissioner of Income tax has not examined and decided whether or not the order is erroneous but has directed the Assessing Officer Officer to decide the aspect/question....

Similar view has been expressed by Hon'ble Madras High Court in the case of CIT Vs. Amalgamations Ltd (238 ITR 963).

12. The law as laid down by the Hon'ble High Courts makes it clear that when the AO has conducted enquiry on an issue, then the Ld Pr. CIT before holding an order to be erroneous, should conduct necessary enquiries or verification in order to show that the finding given by the AO on that issue is erroneous/unsustainable in law.

13. At this juncture, we may refer to the provisions of sec. 11(2) and 11(3) of the Act, which is extracted below:-

> 11(2) Where eighty-five percent of the income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:—
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> (a) such person furnishes a statement in the prescribed form and in the prescribed manner to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years;
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> (b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5);
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> (c) the statement referred to in clause (a) is furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the retur of income for the previous year:
>
> Provided that in computing the period of five years referred to in clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.
>
> Explanation.—Any amount credited or paid, out of income referred to in clause (a) or clause (b) of sub-section (1), read with the Explanation to that sub-section, which is not applied, but is accumulated or set apart, to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter.

(3) Any income referred to in sub-section (2) which

(a) is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto, or

(b) ceases to remain invested or deposited in any of the forms or modes specified in sub-section (5), or

(c) is not utilised for the purpose for which it is so accumulated or set apart during the period referred to in clause (a) of that sub-section or in the year immediately following the expiry thereof;

(d) is credited or paid to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10;

shall be deemed to be the income of such person of the previous year in which it is so applied or ceases to be so accumulated or set apart or ceases to remain so invested or deposited or credited or paid or, as the case may be, of the previous year immediately following the expiry of the period aforesaid."

14. Sec. 11(3) deals with the situation, when the assessee fails to utilize the income accumulated u/s 11(2) of the Act. Before us, the Ld A.R made reference to clause (c) of sec. 11(3) and submitted that the taxability of the accumulated income u/s 11(2) of the Act if any, is required to be examined only in the year immediately following the expiry of period of accumulation is not correct in the facts of this case-because clause (c) of sec. 11(3) is attracted only in the event assessee fails to utilize the accumulated income within the period for which it is set-apart as per sec. 11(2)(a) of the Act; and that is not relevant to be considered. As far as the relevant facts of the present case are concerned, a perusal of Form 10 would reveal that the accumulated amount in AY 2016-17 was to the tune of Rs 14.51 crores up to 31.03.2021 ie, AY 2021-22; and therefore non-utilization of accumulated amount as per clause (c) of sec 11(3) will attract taxation in the previous year immediately following the expiry of the period i.e, in AY 2022-23. However, it has to be taken note that is not the case of the Ld CIT(E) about the non-utilization of amount accumulated in AY 2016-17 (i.e. Rs.14.51 crores). Whereas the fault pointed out by the Ld. CIT(E) is regarding the issue of non-examination by AO of Rs 6 crores expended by assessee in this relevant AY (out of accumulated amount of Rs 14.51 crores) which in such a situation according to us, clause (a) or (d) of sec. 11(3) of the Act is applicable. And clause (a) of Section 11(3) of the Act states that if the amount so accumulated is applied to purposes other than charitable or religious purposes or ceases to be accumulated or set apart for application thereto, then in such an event [when there is violation of clause (a)], then, the amount so applied shall be deemed to be the income of the previous year in which it is so applied; or as per clause (d) of sec 11 (3) of the Act, if the amount is credited or paid to any Trust or

Institution as stated therein, then the amount so credited or paid to the Trust or Institution-shall be deemed to be the income of assessee of the previous year in which it is so credited or paid. Therefore, according to us, the AO is duty bound to enquire about the accumulated amount which has been claimed to have been expended and examine whether it has violated clause (a), or (b) or (d) of sec. 11(3) of the Act because in the event here is any breach then it shall be deemed to be the income of the previous year in which it-is so applied or ceases to be invested or credited/paid -as the 'case may be. So in the event if there is any expenditure of accumulated amount within the- set-apart period and if there is any violation of clause (a), or (b) or (d) -of sec. 11(3) of the Act; then in such a factual situation only, the tax liability could be imposed upon the assessee. Therefore the contention of Ld AR that the expenditure of Rs 6 crores can be looked in to by AO only in AY 2022-23 is devoid of merit and so rejected. Having said so, as held by the Hon'ble Supreme Court in the case of Malabar Industrial company (supra) before the Ld Commissioner invokes revisional jurisdiction u/s 263 of the Act, twin conditions should be satisfied viz., (i) the order of AO should be erroneous and (i) as a consequence of passing of erroneous order, prejudice is caused to the interest of revenue. Unless both the conditions are satisfied, the Ld. CIT cannot invoke the provisions of sec. 263 of the Act. Hence, in the facts of the present case, it is possible to show that there was violation of clause (a) of sec. 11(3) which would attract tax liability, which may cause prejudice to the interests of revenue.

15. Though the perusal of the impugned revision order passed by Ld CIT(E) it is not clear, we infer that the case of Ld CIT(E) is that the assessee might have violated the provisions of clause (a) of Section 11(3) of the AO and the AO has failed to examine the same. However, we cannot countenance such a view of Ld. CIT(E) because, we have already taken note (supra) that AO has enquired about the accumulation of income of Rs. 6 crores and utilization thereof for the purpose for which it was accumulated and have allowed it, which is a plausible view unless the Ld CIT(E) has conducted during revisional proceedings enquiry or verified the facts in order to come to a conclusion that AO's view was erroneous/un-sustainable in law. As noticed (supra) by Hon'ble High Courts had made it clear that once AO has conducted enquiry (on an issue) then the Ld Pr. CIT before holding the order of AO to be erroneous, should have conducted necessary enquires or verification in order to show that the finding given by the AO on that issue is erroneous/unsustainable in law. Coming back to the present case, once we have found that AO has discharged the duty of investigator (on the utilization of Rs 6 crores), then before Ld. CIT(E) holds the view of AO as erroneous, it was imperative on the part of Ld CIT(E) to have made necessary enquiries or verification and should have arrived at a conclusion that there was breach/violation of clause (a) or clause (b) or clause (d) of sec. 11(3) of the Act. Admittedly, in the instant case, the Ld CIT(E) has not conducted any such enquiry or verification. In such a scenario, we have to hold that he has initiated revision jurisdiction on mere conjectures, suspicions and surmises, which is not permitted.

> 16. As noticed earlier the AO has conducted necessary enquiries regarding utilization of the accumulated income of Rs.6 crores was for the purpose for which it was accumulated and has accepted the same which is a plausible view. Therefore Ld. CIT(E) could have invoked jurisdiction u/s 263 of the Act only after enquiring himself, which we have already noticed that he has omitted to do so. In such a scenario, his impugned action of finding the action of AO to accept the claim of expenditure of Rs.6 crores as erroneous and prejudicial to the interests of revenue is untenable. Accordingly, we are of the view that the impugned revision order passed by Ld PCIT is not sustainable in law and assessee succeeds on the legal issue raised before us. Accordingly, we quash the impugned revision order passed by Ld CIT(E).
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> 17. In the result, the appeal filed by the assessee is allowed. Order pronounced in the open court on this 02/01/2023."

3. Learned Counsel Mr. Pritish Chatterjee appeared for the Appellant-Revenue, and Learned Counsel Mr. Dharmesh Shah, along with Mr. Dhaval Shah appeared for the Respondent-Assessee.

4. Mr. Chatterjee, learned Counsel for the Appellant-Revenue, contended that the order passed by the ITAT failed to properly appreciate the material available on record. He submitted that in the facts of the present case, the AO had not verified the complete details insofar as the Respondent-Assessee was concerned, and the assessment order was an order which was erroneous and prejudicial to the interest of the Revenue. He further contended that the assessment order was erroneous and prejudicial to the interest of revenue inasmuch as it was passed on an inadequacy of enquiry, and further the provisions of Explanation 2 to Section 263 of the Act were rightly invoked by the CIT (Exemptions), Mumbai. He also sought to place reliance on the decision of this Court in the case of **Sesa Starlite Ltd Vs Commissioner of Income Tax**[2], wherein this Court upheld the provisions under Section 263 of the Act on the ground that proper enquiries whatsoever were not

2 Tax 430 ITR 121 (Bom)

made by the AO before allowing a deduction under Section 10B of the Act to the Assessee, and therefore held that the assessment order was erroneous and prejudicial to the interest of the Revenue, and the substantial question of law raised therein was answered against the Assessee and in favour of the Revenue. He therefore submitted that in the facts of the present case also the AO had not made the proper enquiries, and considering the view taken by this Court in Sesa Starlite Ltd. (supra), the revisionary proceedings were rightly initiated by the CIT (Exemptions).

5. *Per contra*, Mr. Shah, learned Counsel for the Respondent-Assessee has contended that the order passed by the AO was passed after conducting proper enquiries, and in fact the issue of utilization of Rs. 6 crores out of the accumulated funds under Section 11(2) of the Act in AY 2016-17 was examined by the AO. He submitted that the AO had made specific enquiries through the notice dated 17th January 2019 and the notice dated 11th October 2019, and in response thereto, the Respondent-Assessee had furnished details of utilization of Rs. 6 crores vide its letters dated 30th January 2019 and 3rd December 2019. He further submitted that the Respondent-Assessee had furnished details of accumulation of funds under Section 11(2) of the Act in the earlier AYs, details of utilization of funds, copy of Form No. 10, and board resolutions, and it is only once the AO was satisfied with the details furnished by the Respondent-Assessee that the AO had taken a possible view of the matter and assessed the income of the Respondent-Assessee at Nil. He therefore submitted that this was not a case of non-enquiry as sought to be made out by the Appellant-Revenue, and hence the revisionary power by the Appellant-

Revenue was wrongly invoked. He also submitted that the funds accumulated during the year ending 31st March 2016 could be utilized by the Respondent-Assessee within the next five years, and hence the question of non-utilization of funds and consequences thereon could be only examined in AY 2022-23 and not in the relevant AY. He therefore submitted that the CIT (Exemptions), had not given any finding on the aforesaid submission and passed the revisionary orders only on the ground that a proper enquiry was not made by the AO. In respect of the invocation of Explanation 2 to Section 263 of the Act, learned Counsel for the Respondent-Assessee sought to place reliance on the decision of the Supreme Court in the case of **Principal Commissioner of Income Tax, Surat, Vs. Shreeji Prints Pvt. Ltd.**[3], wherein the Supreme Court has taken the view that if in the show-cause notice issued under Section 263, there is no mention that the provisions of Explanation 2 to Section 263 are to be invoked, then invocation of Explanation 2 in the order without confronting the Assessee is not appropriate and sustainable in law, and hence is liable to be set aside. He also sought to place reliance on the decision of this Court in the case of **Commissioner of Income Tax Vs Nirav Mody**[4], wherein this Court has taken the view that the Commissioner is not permitted to invoke Section 263 of the Act wherein a view has been taken by the AO on enquiry, and once the AO is satisfied, consequent to making an enquiry and on examining the evidence produced by the Assessee establishing the identity and credibility/worthiness of the donor and also the genuineness of the gift, Commissioner who in his order in revision has not doubted the genuineness of the

3 [2021] 130 taxmann.com 294 (SC)

4 [2017] 77 taxmann.com 15 (SC)

evidence produced by the Assessee cannot exercise the powers under Section 263 of the Act to take another view as opposed to the view taken by the AO. He has also submitted that in the present case all the facts had been verified at the time of passing of the assessment order, and hence the order dated 12th December 2019 passed by the AO was not an order which was erroneous and prejudicial to the interest of the Revenue, and therefore the ITAT had rightly come to the conclusion that the revisional order dated 24th March 2022 passed by the CIT (Exemption), Mumbai could not be sustained.

ANALYSIS

6. We have heard Counsel for the parties and with their assistance we have perused the record. We have also perused the order passed by the CIT (Exemptions), and the impugned order passed by the ITAT.

7. We are of the view that the ITAT has correctly reached the conclusion that the order passed by the AO dated 12th December 2019 was not erroneous and prejudicial to the interest of the Revenue, inasmuch as, the said order was passed on a verification of all the materials submitted by the Assessee before the AO. We are also of the view that the Assessee, as recorded in the order of the ITAT, had submitted before the AO all the details as called for, in respect of the accumulation of funds in the earlier years, and also submitted details of the amounts utilized out of those funds. The Respondent-Assessee had furnished all the relevant details of Rs. 6 crores spent by it during the year under consideration, out of the amounts accumulated in the preceding year, and therefore the CIT (Exemption),

erroneously held that the Respondent-Assessee had furnished utilization of accumulated amounts under broad heads. The CIT (Exemptions), was therefore of the view that the AO could have asked for breakup details, and examined with supporting evidences that the said utilization is as per the objects of the Respondent-Assessee.

8. Such view and approach to our mind, did not warrant invoking the provisions of Section 263 of the Act, inasmuch as it is not the case that the AO had not verified any details. In fact, it is very clear that the Respondent-Assessee had, by letters dated 30th January 2019 and 3rd December 2019, along with the required board resolutions, Form No. 10, and details of utilization of funds, along with details of the accumulation of funds made under section 11(2) of the Act, given complete details to the AO, and on the basis of the verification thereof, the AO had passed the assessment order dated 12th December 2019. Thus, the order of the AO could not be revised by the CIT (Exemptions), merely on the ground that further details were required to be called for. The ITAT has rightly reached to the conclusion on merits that if at all the CIT (Exemptions), had to decide upon the fact whether the utilization of the funds which were accumulated in AY 2016-17 were rightly made by the Respondent-Assessee, the same would have to be done after the expiry of 5 years from the date from the AY of accumulation, i.e, in AY 2022-23, and not in the present AY, that is AY 2017-18. However, this, to our mind was not the issue which the CIT (Exemptions), had to decide, but the only issue on which the CIT (Exemptions), took the view that the AO had erred, was that the AO had not conducted inquiries and not applied his mind. This, in our

view, was an erroneous approach and interpretation arrived by the CIT (Exemptions), hence the ITAT has rightly held that if the AO has conducted inquiries and applied his mind, and had taken a possible view of the matter, then the CIT (Exemptions), on the basis of another possible view could not pass orders under Section 263 of the Act, merely because he has a different opinion in the matter.

9. It is settled law that the consideration of the Commissioner as to whether an order is erroneous in so far as it is prejudicial to the interests of the Revenue must be based on materials on record of the proceedings called for by him, and if there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such conclusion, the very initiation of proceedings by him would be illegal and without jurisdiction. The ITAT has therefore rightly come to the conclusion that the CIT (Exemptions), could not have initiated proceedings with a view to start *de novo* or a fishing inquiry in matters or orders which are already concluded, unless he was able to hold that the AO's view on the issue was unsustainable in law.

10. We are also of the view that the ITAT has rightly placed reliance on the decision rendered in **Commissioner of Income Tax Vs. Gabriel India Ltd.**[5], wherein the term "erroneous" has been interpreted. The ITAT has also rightly placed reliance on the decision in **Commissioner of Income-tax Vs. Nagesh Knitwears (P.) Ltd.**[6], wherein the Delhi High Court has elucidated and

5 (1989) 176 ITR 349

6 [2012] 22 taxmann.com 309 (Delhi)

explained the scope of the provisions of Section 263 of the Act, and has therefore rightly come to the conclusion that when the AO had conducted an inquiry on the issue, in that event, the Commissioner, before holding that an order is erroneous, should conduct necessary inquiries or verification in order to ascertain that the findings arrived by the AO on that issue are erroneous, perverse and/or unsustainable in law. In the facts of the present case, this exercise has not been carried out by the CIT (Exemptions) and therefore the ITAT has rightly come to the conclusion that the CIT (Exemptions) could not show that the order passed by the AO was unsustainable in law and no inquiries had been made.

11. Further, even otherwise, on merits, the ITAT has rightly considered the provisions of section 11(2) and (3) of the Act so as to reach to a conclusion that the Respondent-Assessee had shown that the accumulation and utilization of funds has been rightly made, and therefore, if at all, the taxability of the same was to be decided, then it had to be decided in the year in which the expiry of the accumulated amount takes place, i.e., AY 2022-2023, inasmuch as the funds were accumulated in AY 2016-2017. The ITAT has rightly come to the conclusion that as far as the relevant facts of the present case are concerned, a perusal of Form-10 revealed that the accumulated amount in AY 2016-17 was to the tune of Rs. 14.51 crores up to 31st March 2021, i.e, AY 2021-22, and therefore the non-utilization of the accumulated amount as per Section 11(3)(c) would attract taxation in the previous year immediately following the expiry of the period, i.e, AY 2022-23.

12. It is also not the case that the CIT (Exemptions) had come to the conclusion that there had been non-utilization of the amount accumulated in AY 2016-17.

The only issue which the CIT (Exemptions), had flagged was regarding the non-examination by the AO of Rs. 6 crores expended by the Respondent-Assessee in the relevant AY out of the accumulated amount of Rs. 14.51 crores, which is a situation which attracted clause (a) or clause (d) of Section 11(3) of the Act. As rightly held by the ITAT, such situation of invoking the provisions of clause (a) or (d) would only arise in the year after the expiry of the accumulated period, that is AY 2022-23, and not in the relevant AY. The ITAT has correctly referred to the decision in **Malabar Industrial Co. Ltd. Vs. Commissioner of Income Tax**[7], wherein the Supreme Court has held that before the Commissioner invokes revisional jurisdiction under Section 263 of the Act, twin conditions should be satisfied, i.e.,:

i. The order of the AO should be erroneous.

ii. As a consequence of passing of the erroneous order, prejudice is caused to the interest of the revenue.

These conditions, in the facts of the present case, were certainly not satisfied, hence the provisions of section 263 of the Act could not be attracted.

13. We are also in agreement with the submissions made on behalf of the Respondent-Assessee that prior to the invocation of the provisions of Explanation 2 to Section 263 of the Act, the show-cause notice was required to specify that the aforesaid Explanation is to be invoked against the Assessee, and if the show-cause notice does not mention that the Explanation is to be invoked, then the provisions of Section 263 of the Act cannot apply. As the Respondent-Assessee was not confronted with the aforesaid Explanation, hence, such an order, without

7 [2000] 243 ITR 83 (SC)

confronting the Respondent-Assessee with the invocation of Explanation 2 to Section 263 was not appropriate and sustainable in law. We are therefore in agreement with learned Counsel on behalf of the Respondent-Assessee on this issue.

14. Learned counsel on behalf of the Respondent-Assessee has placed reliance on the decision of the Supreme Court in **Principal Commissioner of Income Tax, Surat, Vs. Shreeji Prints Pvt. Ltd.** (supra) in support of the above proposition. We are of the view that the reliance on the aforesaid decision is apposite to the facts of the present case, inasmuch as the aforesaid decision also supports the propositions as canvassed on behalf of the Assessee. The relevant paragraph of the decision in Principal Commissioner of Income Tax, Surat, Vs. Shreeji Prints Pvt. Ltd. (supra) is reproduced hereunder:-

> "5. The Tribunal has found that in the order passed by the PCIT, *Explanation 2* of section 263 of the Act, 1961 is made applicable. The Tribunal observed that the PCIT has not mentioned in the *show cause notice* to invoke the *Explanation 2* of section 263 of the Act 1961. Therefore, by invocation of *Explanation* in the order without confronting the assessee and giving an opportunity of being heard to the assessee is not appropriate and sustainable in law."

15. Learned Counsel on behalf of the Respondent-Assessee has also placed reliance on the decision of this Court in Commissioner of Income Tax Vs Nirav Mody (supra) to canvas that once the AO had made the necessary enquiries and there was no doubt about the genuineness of the gift, then the Commissioner cannot exercise revisionary jurisdiction, where not doubt was expressed about the genuineness of the gift on the basis of the evidence produced by the Assessee. The order of the this Court was subsequently continued by the Supreme Court.

Relevant observations of the decision rendered in the case of Commissioner of Income Tax Vs Nirav Mody (supra) read thus:-

> "6. It is a settled position in law that powers under Section 263 of the Act can be exercised by the CIT on satisfaction of twin conditions viz. the Assessment Order should be erroneous and prejudicial to the Revenue. By erroneous is meant contrary to law. Thus, this power cannot be exercised unless the CIT is able to establish that the order of the Assessing Officer is erroneous and prejudicial to the Revenue. Thus where there are two possible views and the Assessing Officer has taken one of the possible views, no occasion to exercise powers of Revision, can arise. Nor can Revisional power be exercised for directing a fuller inquiry to find out if the view taken is erroneous, when a view has already been taken after inquiry. This power of Revision can be exercised only where no inquiry as required under the law is done. It is not open to enquire in cases of inadequate inquiry.
>
> 7. Firstly, the Revenue contends that the exercise of powers under Section 263 of the Act is justified as in this case, as no inquiry in respect of the gifts received during the subject years was done by the Assessing Officer for the Assessment orders for Assessment Years 2007-08 and 2008-09. This according to the Revenue is evident from the Assessment Orders dated 31st December, 2009 and 30th December, 2010 which does not even make a mention of the gifts received much less discuss and/or deal with the same. This issue is no longer res integra as this Court in *Idea Cellular Ltd.* v. *Dy. CIT* [2008] 301 ITR 407 (Bom.) has held that if during Assessment proceedings queries were raised and the assessee responded to the same, then even if an Assessment order does not mention the same, it does not mean that the Assessing Officer has not applied his mind to the issues. It would be well-nigh impossible for an Assessing Officer to complete all assessments assigned to him under Section 143(3) of the Act if he is required to deal with all issues which arose during the Assessment Proceedings. Thus, the Assessment Order primarily deal with only those issues in respect of which the Assessee has not been able to satisfy him and give reasons for his conclusion. This would enable the Assessee to challenge the same, if aggrieved. In fact the Gujarat High Court in *CIT* v. *Nirma Chemical Works Ltd.* [2009] 309 ITR 67/182 Taxman 183 has observed that if an assessment order were to incorporate the reasons for upholding the claim made by an assessee, the result would be an epitome and not an assessment order. In this case, during the assessment proceedings for both the Assessment Years, the Assessing Officer issued a query memos to the assessee, calling upon him to justify the genuineness of the gifts. The Respondent-Assessee responded to the same by giving evidence of the communications received from his father and his sister i.e. the donors of the gifts along with the statement of their Bank accounts. On perusal, the Assessing Officer was satisfied about the identities of the donors, the source from where these funds have come and also the creditworthiness/capacity of the donor. Once the Assessing Officer was satisfied with regard to the same, there was no further requirement on the part of the Assessing Officer to disclose his satisfaction in the Assessment

Order passed thereon. Thus, this objection on the part of the Revenue, cannot be accepted.

8. It is next submitted that the donor had not been examined by the Assessing Officer. It is not in every case that every evidence produced has to be tested by cross examination of the person giving the evidence. It is only in cases where the evidence produced gives rise to suspicion about its veracity that further scrutiny is called for. If there is nothing on record to indicate that the evidence produced is not reliable and the Assessing Officer was satisfied with the same, then it is not open to the CIT to exercise his powers of Revision without the CIT recording how and why the order is erroneous due to not examining the donors. Thus, this objection to the impugned order by the Revenue is also not sustainable.

9. It was next submitted that no enquiry was done by the Assessing Officer to find out whether the donor Mr Deepak Modi (father) had received money from M/s. Chang Jiang as claimed. Nor any inquiry was done to find out whether the sister had in fact earned amounts on account of Foreign Exchange Transactions as claimed by her. We find that this enquiry of a source of source is not the requirement of law. Once the Assessing Officer is satisfied with the explanation offered on inquiry, it is not open to the CIT in exercise of his revsional powers direct that further enquiry has to be done. At the very highest, the case of the Revenue is that this is a case of inadequate inquiry and not of "no enquiry." It is well settled that the jurisdiction under Section 263 of the Act can be exercised by the CIT only when it is a case of lack of enquiry and not one of inadequate enquiry. This view has been taken by this Court in the matter of *CIT* v. *Shreepati Holdings & Finance (P.) Ltd.* [ITA 1879 of 2013 dated 5th October, 2013], by the Delhi High Court in *CIT* v. *Vikas Polymers* [2012] 341 ITR 537/194 Taxman 57 and in *D.G. Housing Projects* (*supra*). In fact the Delhi High Court in *D.G. Housing Projects* (*supra*) while so holding placed reliance upon the decision of this Court in *Gabriel (India) Ltd.* (*supra*). It is very important to note that the CIT in his order under Section 263 of the Act has recorded the fact that there has been no adequate inquiry. Thus, this is not a case of no inquiry, warranting order under Section 263 of the Act. Thus, this objection on the part of the Revenue, is also not sustainable.

10. The Revenue placed reliance upon the decision of the Delhi High Court in *D.G. Housing Projects Ltd.,* (*supra*) that as the Assessing Officer had not enquired into the source of the source of the gifts received by the Assessee, the Assessment Order is erroneous. The aforesaid decision holds that the power of Revision under Section 263 of the Act would normally be exercised in case of no enquiry and not in cases of inadequate enquiry. However, even in case of inadequate enquiry by the Assessing Officer, the order of the Assessing Officer could be erroneous in two classes of situation. The first class would be where orders passed by the Assessing Officer are ex facie erroneous i.e. a decision rendered ignoring a binding decision in favour of the Revenue or where enquiry is per se mandated on the basis of the record available before the Assessing Officer and that is not done. In the second class of cases, where the order is not ex facie erroneous, then the CIT must himself

conduct an enquiry and determine it to be so. The Court held that it is not permissible to the CIT while exercising power under Section 263 of the Act to remit the issue to the Assessing Officer to re-examine the same and find out whether earlier order of Assessment is erroneous. It is the CIT who must hold that the order is erroneous, duly supported by reasons. In the present facts, the CIT in exercise of its powers under Section 263 of the Act has merely restored the Assessment to the Assessing Officer to decide whether the gifts were genuine and, if not, then the Assessment could be completed on application of Section 68 of the Act. In this case, the order passed by the Assessing Officer is not per se erroneous and further the CIT has not given any reasons to conclude that the order is erroneous. In fact, he directs the Assessing Officer to find out whether the order is erroneous by making further enquiry. This the decision of the Delhi High Court in *D.G. Housing Projects Ltd.* (*supra*), clearly negates. In the above view, the decision of Delhi High Curt in *D.G. Housing Projects Ltd.* (*supra*) would not assist the Revenue in the present facts.

11. Further, reliance is placed upon by the Revenue upon the decision of the Apex Court in *Amitabh Bachchan* (*supra*) to impugn the order of the Tribunal. In the facts of the Supreme Court decision, the Respondent-Assessee had filed a revised return, claiming additional expenses. During the Assessment Proceedings, the Assessing Officer called upon the Assessee to furnish the details with regard to the expenses claimed to be incurred. The Assessee therein pointed out that the payments for expenses had come out of cash balance available with him. When the Assessing Officer commenced enquiry in respect of the claim of expenditure out of cash balance available, seeking to invoke Section 69(C) of the Act and treat the expenditure claimed as unexplained expenditure, the Assessee therein withdrew his revised return of income. Once this was done, the Assessing Officer accepted the same and did not make any further enquiry. The CIT in exercise of its powers under Section 263 of the Act noticed that the Assessee had after having pressed his claim for expenditure in cash, withdrew the claim by withdrawing the revised return of income. This was done only after the enquiry had commenced. This withdrawal of revised income and consequent claim for cash expenditure was contrary to the stand of the Assessee himself. This change on the part of the Assessee on commencement of enquiry, made further enquiry into his claim for cash expenditure necessary. In the above facts, the CIT while exercising his powers under Section 263 of the Act found that the facts on record per se mandated an enquiry to be made into the claim of the Assessee and not doing the same resulted in the order being erroneous. Thus, the Bachchan's case was a case where once the claim was withdrawn, then enquiry which was to be conducted, was aborted by the Assessing Officer. Therefore, a case of non-enquiry. It may have been different, if the Assessing Officer had enquired into the cash expenditure and its source as claimed, to come to his own conclusion and even accepted the stand of the Assessee. In such a case, even if the CIT would have taken a view that the satisfaction of the Assessing Officer is not correct, he would not have been able to exercise his powers of Revision under Section 263 of the Act.

> 12. In the present facts, the Assessing Officer was satisfied, consequent to making an enquiry and examining the evidence produced by the Assessing Officer, establishing the identity and creditworthiness of the donor as also the genuineness of the gift. The CIT in his order of Revision, does not indicate any doubts in respect of the genuineness of the evidence produced by the Assessee. The satisfaction of the Assessing Officer on the basis of the documents produced is not shown to be erroneous in the absence of making a further enquiry. It is made clear that our above observations should not be inferred to mean that it is open to the Assessing Officer to enquire into the source of source for the purpose of the present facts. This is a case where a view has been taken by the Assessing Officer on enquiry. Even if this view, in the opinion of the CIT is not correct, it would not permit him to exercise power under Section 263 of the Act. In fact, the Apex Court in *Amitabh Bachchan* (*supra*) has observed that there can be no doubt that where the view taken by the Assessing Officer is a possible view, interference under Section 263 of the Act, is not permissible."

16. We are further of the view that the reliance placed by the learned Counsel for the Appellant-Revenue on the decision of the **Sesa Starlite Ltd** (supra) is not well rounded in to the facts of the present case, as in such case, this Court upheld the proceedings under Section 263 of the Act on the ground that on the issue of deduction under Section 10B claimed by the Assessee, there was absolutely no consideration by the AO, and hence the assessment order was passed on a non-application of mind to the material on record, it was hence held that, revisionary powers exercised by the Commissioner of Income-Tax under Section 263 of the Act were correct and not bad in law. However in the facts of the present case, the decision of Sesa Starlight Ltd (supra) would not be applicable, as prior to the passing the assessment order dated 12th December 2019, the AO had raised specific queries regarding the utilization of accumulated funds by the Respondent Assessee, and hence it was not a case of non-application of mind on the part of the AO which warranted the CIT (Exemptions), Mumbai to exercise his powers under Section 263 of the Act. The Respondent-Assessee has demonstrated the utilisation of the

accumulated funds under Section 11(2) of the Act, and hence it is not a case of 'no consideration' by the AO. The Respondent-Assessee has in fact by letters dated 30th January 2019 and 3rd December 2019 replied to all the queries as raised by the assessing officer prior to passing the assessment order dated 12th December 2019.

17. In the light of the aforesaid discussion, in our considered view the ITAT has rightly set aside the order of CIT (Exemptions), seeking to revise the assessment order by holding that the CIT (Exemptions) had erred in exercising the jurisdiction under Section 263 of the Act, and to reach to a conclusion that the AO had conducted necessary enquires regarding utilisation of the accumulated income of Rs. 6 Crores for the purpose for which it was accumulated, and had accepted the same as a possible view.

18. Resultantly the impugned order passed by the ITAT does not give rise to any substantial questions of law requiring interference or consideration in the present Appeal. The Appeal is accordingly dismissed. No costs.

(AARTI SATHE, J.) (G. S. KULKARNI, J.)