IN THE HIGH COURT OF BOMBAY AT GOA.

Tax Appeal No.48/2016

The Principal, Commissioner of Income Tax,
(Central), Central Revenue Building
Queen's Road, Bangalore **Appellant.**

Versus

Dr. William Britto
184-189, Machados Cove,
Vainguinim Valley, Dona Paula,
Goa 403 004.
PAN:ADCPB3087 **Respondent**

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Ms. Asha Desai, Advocate for the Appellant.
Shri S.R. Rivankar, Advocate for the Respondent.

CORAM : F.M.REIS & NUTAN D.SARDESSAI, JJ
DATE : 28/09/2016.

ORAL JUDGMENT (PER F.M. REIS, J):

1. Heard Ms. Asha Desai, learned counsel appearing for the appellant and Shri Rivankar, learned counsel appearing for the respondent.

2. The challenge by the Revenue is to the order passed by the Income Tax Appellate Tribunal on the ground that the learned Tribunal has erroneously interfered in the order passed by the CIT (Appeals), as according to the appellant, there was sufficient material on record to suggest that the subject amount of Rupees Six crores was credited to the personal account of the assessee.

It was further submitted that as such, as the A.O. had not done proper investigation nor sought the information with regard to the source of such amount, the Commissioner was justified to exercise powers of Revisional jurisdiction and direct the A.O. to proceed with the assessment afresh. It is further submitted that considering the contrary stand taken by the respondent before the Civil Court in connection with the subject amount, would itself suggests that the order passed by the Commissioner (Appeals) was justified and as such the Tribunal was not justified to interfere in such order. The learned counsel has taken us extensively to the order of the Commissioner of Income Tax to point out that the learned Commissioner has minutely examined the relevant aspect to come to the conclusion that the case is made out for exercise of Revisional jurisdiction. The learned counsel as such points out that there are substantial questions of law for consideration in the appeal.

3. On the other hand, Shri Rivankar, learned counsel appearing for the respondent, has pointed out that it is well settled that a mere erroneous approach by the Assessing Officer would not, by itself, be a ground for exercising revisional jurisdiction by the Commissioner. The learned counsel further points out that there is a categorical finding in the order passed by the learned Tribunal to the effect that the subject amount of

Rupees Six crores has been assessed in the hands of Britto Amusement Private Limited which is a Company which has been floated by the respondent. It is further pointed out that the amount has been transferred by a banking transaction and as such, the question of any interference in the order passed by the learned Tribunal would not at all arise. It is further pointed out that as such there are no substantial question of law which arise for consideration.

4. We have given due consideration to the rival contentions of the learned counsel for the parties. The learned Tribunal, while disposing of the appeal has noted at para 17 thus:-

> "17. The third ground deals with the contention that the AO has duly considered the receipt of Rs. 6 crores while passing the order u/s 153C. Therefore, it cannot be said that it is not a case where inquiries were not made by the AO. AO has duly made the inquiry and taken a view after applying his mind that this amount has to be added in the hands of the company in which Assessee is a Director. It is an undisputed fact that in the case of the search the cases of the group are centralized so that each and every matter which has bearing on the determination of the income can be considered by one officer and there cannot be any double addition or escapement of the income in the hands of one Assessee. In the case of the Assessee was

centralized vide letter dt. 3.6.2010 alongwith the case of GCPL & BAPL. The assessments in case of all the three Assessees were simultaneously done by the same AO. The AO who passed the assessment order in the case of the Assessee had before him the bank statements, statements recorded in the course of the search and survey, the papers and proceedings of the civil suit between the Assessee and Suryanarayan. Even the date of hearing in the case of the Assessee and BAPL, the company in which the Assessee is a Director is also the same. The assessment order in the case of all the three Assessees were passed on the same date by the same AO. This is also a fact that in case of centralized proceedings especially in search cases, common query letter is issued by the AO. The Assessee also submits common reply. We noted that in the case of Britto Amusement Pvt. Ltd. the AO under para 9 to 9.6 had a detailed discussion in respect of the said sum of Rs. 6 crores which has been credited into the account of the Assessee and ultimately added the said sum on substantive basis in the hands of M/s. Britto Amusement Pvt. Ltd. in the following manner:-

"9.1 Mr. N. Suryanarayan paid another sum of Rs. 6 cr to Dr. William Britto which was deposited in the personal account of Dr. Britto. Mr Suryanarayan claimed that this amount was given for an off shore casino project conceived by Dr. Britto. But Dr. Britto did not repay this amount. Mr. N. Suryanarayan filed a civil case for recovery of the amount of Rs. 6 crores. Dr. William Britto filed an affidavit before the court stating that the amount of Rs. 6 crores was given as repayment of gambling debt which Mr. Suryanarayan had incurred while playing in the casino. It was found that the said gambling debts are not accounted in the books of M/s Britto Amusements Pvt. Ltd or M/s Goa Golf Club Pvt. Ltd. When confronted Dr. William Britto while deposing on 12.01.2010 stated as under :................"

"9.6 In view of the above it is clear that Dr. Britto had been taking contradictory stands in this issue. Further, the companies of Dr. Britto are having enough cash flow to repay any loan that is outstanding and from the books of accounts it is found that no efforts have been made to repay the money after taking the same from him. This clearly indicates that the same represents not a loan but an amount which was due to M/s Goa Golf Club Pvt. Ltd or M/s Britto Amusements Pvt Ltd as gambling debt. The affidavit filed before the Hon'ble court cannot be ignores. The stand now taken before the department is only an afterthought attempt to circumvent the provisions of law and a self serving statement to evade payment of taxes. There is no evidence as to the point of time when the gambling debts were created. The

> gambling debts have not been recorded in the books of account nor have the repayments been recorded. Hence the undisclosed income of Rs. 6 crores is brought to tax for AY 2008-09 in the hands of M/s Britto Amusements Pvt Ltd as claimed by Dr. William Britto in his affidavit."
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> Thus, we are of the view that the AO has duly inquired about the sum of Rs. 6 crores came into the bank account of the Assessee and after applying his mind took a conscious decision that the said sum credited into the bank account of the Assessee represents the income of M/s. Britto Amusement Pvt. Ltd. and has to be added in its hands and accordingly no addition was made in the hands of the Assessee".

5. There is a categorical finding of the learned Tribunal that the subject amount of Rupees Six crores has been credited into the bank account of the respondent represents the income of M/s. Britto Amusement Pvt. Ltd. and has to be added in its hands. The learned Tribunal also noted that the assessment were centralized and the same Assessing Officer has taken a view and accepted the stand taken by the said Company that such amount were to be assessed in the hands of the private company. The learned Tribunal has also relied upon the judgment of the Apex Court in the case of **Malabar Industrial Co.Ltd. Vs. CIT reported in 243 ITR 83 (SC)** by observing at para 18 thus:

18. "The pre-requisite to the exercise of jurisdiction by the Commissioner under section 263 is that the order of the AO is erroneous insofar as it is prejudicial to the interest of the revenue. The Commissioner has to be satisfied of twin conditions namely, (i) the order of the assessing officer sought to be revised is erroneous; and (ii) is prejudicial to the interests of the revenue. If one of them is absent-if the order of the Assessing office is erroneous but is not prejudicial to the revenue - recourse cannot be had to section 263(1). There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the assessing officer, it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind. The phrase `prejudicial to the interest of the revenue' has to be read in conjunction with an erroneous order passed by the assessing officer. Every loss of revenue as a consequence of the order of the assessing officer cannot be treated as prejudicial to the interest of the revenue. For example, if the assessing officer has adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the assessing officer has

taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue, unless the view taken by the assessing officer is unsustainable in law. Where a sum not earned by a person is assessed as income in his hands on his so offering the order passed by the assessing officer accepting the same without application of mind as such will be erroneous and prejudicial to the interest of the revenue."

6. The learned Tribunal has further noted at para 23 thus:

23. "A perusal of the order framed by CIT indicates that the Assessment Order passed by the A.O. was set aside on the ground that the assessee has not offered her taxation the sum of Rs. 6 crores received from Mr. N. Suryanarayan. This, in our considered opinion, cannot be sufficient ground for setting aside the assessment. While making Assessment Order, it is the satisfaction of the A.O. who made the enquiry and it should be a touchstone of the assessment order passed by him, the CIT cannot substitute his view in place of finding of the A.O. until and unless the view taken by by the A.O. is unsustainable in law. No cogent material or evidence was brought to our knowledge by the ld. D.R.which may prove that the decision taken by the A.O. that the sum of Rs. 6 crores has to be added in the hands of the company namely GAPL. The order passed by CIT is illegal without

> jurisdiction. The order passed by the CIT cannot be sustained if the order is sustained then this will permit the illegality to continue and the subsequent action carried out on the illegal order are also illegal.

7. Taking note of the said observations of the learned Tribunal and the findings of facts which have not been assailed by the learned counsel for the appellant and as the subject amount admittedly has been assessed in the name of the said Private Limited Company, the question of interfering in the impugned order passed by the learned Tribunal would not at all be justified. The substantial question of law proposed by the appellant as such would not arise in the present appeal taking note of the findings of the learned Tribunal. The finding of fact arrived at by the learned Tribunal as such cannot be re-appreciated by this Court in the present appeal under Section 260 A of the Income Tax Act. We find no merit in the above appeal. Hence the appeal stands rejected.

NUTAN D. SARDESSAI, J F.M. REIS, J

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