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HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No. 94 Of 2016

M/s Param Transport Pvt. Ltd. Raipur

---- Appellant

Versus

Principal Commissioner of Income Tax-1 Raipur

---- Respondent

And

Tax Case No. 95 Of 2016

M/s Param Transport Pvt Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income Tax 1 Raipur, Chhattisgarh

---- Respondent

And

Tax Case No. 96 Of 2016

M/s Param Transport Pvt Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income Tax 1 Raipur, Chhattisgarh

---- Respondent

And

Tax Case No. 97 Of 2016

M/s Param Transport Pvt Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income Tax 1 Raipur, Chhattisgarh

---- Respondent

And

Tax Case No. 98 Of 2016

M/s. Adept Viniyog Pvt Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income-Tax-1 Raipur, Chhattisgarh

---- Respondent

And

Tax Case No. 99 Of 2016

M/s Utsav Coal Suppliers Pvt Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income-Tax-1 Raipur Chhattisgarh

---- Respondent

And

Tax Case No. 100 Of 2016

M/s. Utsav Coal Suppliers Pvt Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income-Tax-1 Raipur Chhattisgarh

---- Respondent

And

Tax Case No. 101 Of 2016

M/s. Utsav Coal Suppliers Pvt Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income-Tax-1 Raipur Chhattisgarh

---- Respondent

And

Tax Case No. 102 Of 2016

M/s. Utsav Coal Suppliers Pvt Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income-Tax-1 Raipur Chhattisgarh

---- Respondent

And

Tax Case No. 103 Of 2016

M/s. Adept Viniyog Pvt Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income-Tax-1 Raipur Chhattisgarh

---- Respondent

And

Tax Case No. 104 Of 2016

M/s. Vimal Resources Pvt Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income-Tax-1 Raipur Chhattisgarh

---- Respondent

And

Tax Case No. 105 Of 2016

M/s. V.R. Resources Pvt Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income-Tax-1 Raipur Chhattisgarh

---- Respondent

And

Tax Case No. 106 Of 2016

M/s V. R. Resources Pvt. Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income Tax - 1, Raipur, Chhattisgarh

---- Respondent

And

Tax Case No. 107 Of 2016

M/s Ashish Resources Pvt. Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income Tax 1 Raipur, Chhattisgarh

---- Respondent

And

Tax Case No. 108 Of 2016

M/s Vimal Resources Pvt. Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income Tax 1 Raipur, Chhattisgarh

---- Respondent

And

Tax Case No. 109 Of 2016

M/s Vimal Resources Pvt. Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income Tax 1 Raipur, Chhattisgarh

---- Respondent

And

Tax Case No. 110 Of 2016

M/s Vishwanath Resources Pvt. Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income Tax - 1, Raipur, Chhattisgarh

---- Respondent

And

Tax Case No. 111 Of 2016

M/s. Epic Investwell Pvt Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income-Tax-1 Raipur Chhattisgarh

---- Respondent

And

Tax Case No. 112 Of 2016

M/s. Kapil Finvest Pvt Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income-Tax-1 Raipur Chhattisgarh

---- Respondent

And

Tax Case No. 113 Of 2016

M/s. Alok Resources Pvt Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income-Tax-1 Raipur Chhattisgarh

---- Respondent

And

Tax Case No. 114 Of 2016

M/s Kapil Finvest Pvt. Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income Tax-1 Raipur, Chhattisgarh

---- Respondent

And

Tax Case No. 115 Of 2016

M/s Alok Resources Pvt Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income-Tax-1 Raipur, Chhattisgarh

---- Respondent

And

Tax Case No. 116 Of 2016

M/s Ramesh Tradewing Pvt Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income-Tax-1 Raipur, Chhattisgarh

---- Respondent

And

Tax Case No. 125 Of 2016

M/s Vishwanath Resources Pvt. Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income Tax - 1, Raipur, Chhattisgarh

---- Respondent

And

Tax Case No. 126 Of 2016

M/s. Epic Investwell Pvt Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income-Tax-1 Raipur Chhattisgarh

---- Respondent

And

Tax Case No. 127 Of 2016

M/s Kapil Finvest Pvt. Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income Tax-1 Raipur, Chhattisgarh

---- Respondent

And

Tax Case No. 128 Of 2016

M/s Kapil Finvest Pvt. Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income Tax-1 Raipur, Chhattisgarh

---- Respondent

And

Tax Case No. 129 Of 2016

M/s Alok Resources Pvt. Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income Tax-1 Raipur, Chhattisgarh

---- Respondent

And

Tax Case No. 131 Of 2016

M/s Vishwanath Resources Pvt. Ltd. Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income Tax-1 Raipur, Chhattisgarh

---- Respondent

And**Tax Case No. 132 Of 2016**

M/s Ramesh Tradewing Pvt. Ltd Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income-Tax-1 Raipur, Chhattisgarh

---- Respondent

And**Tax Case No. 133 Of 2016**

M/s Ashish Resources Pvt. Ltd Raipur, Chhattisgarh

---- Appellant

Versus

Principal Commissioner Of Income-Tax-1 Raipur, Chhattisgarh

---- Respondent

For Appellant	: Shri Anurag Kalavatiya, Advocate.
For Respondent	: Ms. Naushina Ali, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay Agrawal, J.

Order on Board**Per Deepak Gupta, Chief Justice****12/01/2017**

1. This batch of tax appeals is being disposed of by this common judgment. It would be pertinent to mention that another batch of tax appeals arising out of the

same order of the Tribunal were dismissed on 25.10.2016. The order passed in these tax appeals reads as follows:-

“1. All these tax appeals are being dismissed at the admission stage itself because according to us no question of law much less a substantial question of law arises in these appeals.

2. Briefly stated facts of the case are that the Income Tax authorities conducted search and seizure operations under Section 132 of the Income Tax Act, 1961 (hereinafter called 'the Act') against Agrawal Group of Companies of Shri B.L.Agrawal and others. During search and seizure operations, it was discovered that one company M/s. Prime Ispat Limited was a closely held limited company of Shri B.L.Agrawal and Chartered Account Shri Sunil Kumar Agrawal. Thereafter, search and seizure operations were conducted in the office of Shri Sunil Kumar Agrawal, Chartered Accountant and during these search and seizure operations, it was discovered that there was an investment of Rs. 39.08 crores by some shell companies in M/s. Prime Ispat Limited. The Appellants before us are the Shell Companies. Notice was issued to the Shell Companies to show cause from where they have got the funds to the extent of Rs. 39.08 crores. It would also be pertinent to mention that during search and seizure operations conducted in the office premises of Shri Sunil Kumar Agrawal, Chartered Accountant, pass books of all 232 share holders of these 13 Shell Companies were found in his office. The Bank Accounts were held in two banks only. The addresses of Shell Companies were almost identical. The Assessing Officer issued notices to these Shell Companies under Section 153C of the Act, and also issued a questionnaire. It would also be relevant to refer to question (vi) of the questionnaire which reads as follows:

“(vi) Details of the share capital, share premium account and share application money, if any, which appears as liability in the balance sheet. Please furnish the complete name, address, occupation of the investor and the date and mode of receipt of the funds. Also furnish the compliance made in this regard to the Registrar of Companies.”

3. The Companies were also asked to submit explanation in the following terms:

“3. You are also hereby asked to furnish explanation/submission with reference to the following points:

(I) Details of liability appearing in the balance sheet in form of subscribed share capital, share premium and share application money. In this regard please furnish the complete list giving full name, postal address and PAN and assessment details. Also furnish copies of relevant ledger statements.

(ii) In satisfaction to the requirements of Section 68 of the Income Tax Act, 1961, please furnish the supporting documents for the transaction of share capital subscribed and other amounts received by way share premium and share application money. You are also asked to produce the creditors in support of the claim of these liabilities appearing in the balance sheet.

(iii) In enquires conducted by Income Tax Department regarding funds applied towards share subscription in assessee-company from bank accounts, some of the persons in whose names the bank accounts were operated have denied of having made any share subscription and they also deny of having any knowledge about the assessee-company. In view of their statements, the share capital appearing in their name is proved to be not genuine and the share capital subscribed in this year becomes liable to be taxed in the hands of assessee-company and any such share capital appearing in the balance sheet is also liable to be added by holding the same as cash credit. Please furnish your explanation in this regard. The list of such persons for this year is as under:

(1) for investment made in financial year 2006-07:

1. Dewcharan Sahu
2. Pawan kumar Shukla
3. Mubarak Khan
4. Surendra Verma
5. Shivshankar Verma

(2)

1. Dewcharan Sahu
2. Ranjit Dewangan
3. Narottam Yadav
4. Netram Sagarwanshi
5. Kuleshwar Varma
6. Dinesh Kumar Verma
7. Lochandas Manikpuri
8. Rupendra Kumar Verma
9. Radhelal Chhatri
10. Lalaram Sinha”

4. A detailed reply was submitted by the Appellants herein and thereafter the Assessing Officer passed an order on 30.12.2011 which is identical in all the cases and reads as follows:

“2. On being so satisfied on the basis of the documents seized as mentioned above and pertaining to the assessee company, notice U/s. 153C was issued to the assessee on 29/09/2011 and served on 29/09/2011 requiring to file the return of its income within 30 days of receipt of the notice. In response to which the return of income is filed by the assessee in this office on 21/11/2011. In its return the assessee has declared total income of Rs. NIL. The case was selected for scrutiny by issue of notice U/s. 143(2) dt. 05/12/2011 and questionnaire alongwith notice U/s. 142(1) were issued upon the assessee on 21/10/2011 and duly served. During the course of assessment proceedings, Shri Sunil Kumar Agrawal, CA and AR of the assessee, attended and filed a written submission giving parawise reply to the questionnaire. The assessee company is incorporated on 13/08/2004 which is evident from the copy of the

Certificate of Incorporation filed. The assessee company was required to explain the basis of determining his income and furnish information relating to affairs of his business which was done through compliances made during assessment proceedings. Subject to the above the income of the assessee as shown in the return is accepted.

Income Assessed : Rs. NIL”

5. It would also be pertinent to mention that notices under the Income Tax Act, 1961 were also issued to M/s. Prime Ispat Limited which moved the Settlement Commission of the Income Tax authorities at Calcutta and the Settlement Commission, vide its order dated 07.11.2012 with regard to Shell Companies held as follows:

“5.... Thus, in view of the plethora of evidence produced before us, we are of the opinion that the whole of investment other than that made through the medium of 13 shell companies etc. cannot be held as bogus. We have carefully gone through the statement of facts and the disclosure made by the applicant Prime Ispat Limited, which is a company. Normally, the share subscription is a capital receipt and may not be counted towards income of the company. However, when the facts of the case so require, and the genuineness of shareholders itself is questionable, the AO is not stopped from making enquiries to know the exact nature of receipts. The CIT has already pointed out that the investment in the company Prime Ispat Ltd. has been made by petty account holders, whose bank pass books were knowingly / unknowingly found with the CA and the investment from them (savings bank accounts) were found into the shell companies from whom the investment further flowed to the applicant No. 1 company M/s. Prime Ispat Limited. Thus, as far as investment from shell companies etc. of Rs. 39.08 crores + Rs. 1.40 crores = Rs. 40.48 crores is concerned, the same cannot be treated as fully explained....”

6. Though, the Settlement Commission did not decide the issue and it could not have decided the issue, but it is apparent that questions were raised with regard to the manner of investments made in these 13 shell companies. After the order was passed by the Settlement Commission, notice under Section 263 of the Act was issued on 20.02.2014 to these shell companies. Thereafter, the Commissioner of Income Tax passed a detailed order in which he held that the order of the Assessing Officer is erroneous and prejudicial to the interest of the Revenue since it shows total non-application of mind.

7. The Appellants before us challenged the order of the Commissioner of Income Tax before the Income Tax Appellate Tribunal (hereinafter called 'the Tribunal') which, vide impugned order dated 22.04.2016 has rejected the appeals. The main issue raised before us is that the order of the Assessing Officer cannot be said to be erroneous or prejudicial to the interest of the Revenue. It is also urged that the finding of the Settlement Commission cannot be a foundation for issuing notice under Section 263 of the Act. Lastly, it is urged that this amount of Rs. 39.08 Crores had been added to the income of Shri B.L.Agrawal and therefore, action could not be taken under Section 263 of the Act, especially when

the Assessing Officer after sending a detailed questionnaire has accepted the case of the assessee. We are not at all in agreement with these submissions.

8. To appreciate the rival contention of the parties, it would be apposite to refer to Section 263 of the Act, relevant portion of which reads as follows:

“263. (1) The CIT may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the AO is erroneous insofar as it is prejudicial to the interests of the Revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.”

9. The Bombay High Court in *Commissioner of Income Tax vs. Gabriel India Ltd.*, {(1993) 203 ITR 108 Bom} held as follows:-

“The power of suo motu revision under sub-section (1) is in the nature of supervisory jurisdiction and the same can be exercised only if the circumstances specified therein exist. Two circumstances must exist to enable the Commissioner to exercise power of revision under this sub-section, viz. (i) the order is erroneous; (ii) by virtue of the order being erroneous prejudice has been caused to the interests of the Revenue. It has, therefore, to be considered firstly as to when an order can be said to be erroneous. We find that the expression “erroneous”, “erroneous assessment” and “erroneous judgment” have been defined in Black’s Law Dictionary. According to the definition, “erroneous” means “involving error; deviating from the law”. “Erroneous assessment” refers to an assessment that deviates from the law and is, therefore, invalid and is a defect that is jurisdictional in its nature, and does not refer to the judgment of the Assessing Officer in fixing the amount of valuation of the property. Similarly, “erroneous judgment” means “one rendered according to course and practice of court, but contrary to law, upon mistaken view of law, or upon erroneous application of legal principles.”

10. The Apex Court in *Commissioner of Income Tax vs. Shree Manjunathesware Packing Products and Camphor Works*, {(1998) 231 ITR 53 (SC)}, held as follows:-

“Section 263 of the Income-tax Act, 1961 enables the Commissioner to call for and examine the record of any proceeding under the Act and pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment or canceling the assessment and directing a fresh assessment, if he considers that any order passed by the Assessing Officer is erroneous insofar as it is prejudicial to the interests of the Revenue. The section did not at first contain any Explanation. An Explanation was added to section 263(1) by the Taxation Laws (Amendment) Act, 1984. By the

Finance Act, 1988, the said Explanation was substituted with effect from June 1, 1988. The Explanation was again amended by the Finance Act, 1989. By the amendments made by the Finance Acts of 1988 and 1989 a definition of the term “record” was provided. It has been provided that “record” shall include and shall be deemed always to have included all records relating to any proceeding under the Act available at the time of examination by the Commissioner.”

11. A Division Bench of the Madras High Court in *Mofussil Warehouse and Trading Co. Ltd. vs. Commissioner of Income-tax*, {(1999) 238 ITR 867 (Mad)} was dealing with a case where the assessee company paid amounts to the holding company by way of reimbursement in relation to the utilization of the service of the employees of the holding company. The Assessing Officer had not taken into consideration the exact nature of the claim or the unreasonableness thereof. The Madras High Court held that non performance of such a duty cast upon the Income-tax Officer entitled the Commissioner to invoke his power under Section 263. Relevant observation of the Madras High Court reads as follows:-

“The non-performance of such a duty on the part of the Income-tax Officer culminated in distortions and prejudices to the Revenue. Such distortions and prejudices to the Revenue for being set right, the Commissioner of Income-tax invoked his power under Section 263 and in exercise of such power he cancelled the assessment passed by the Income-tax Officer with a direction to him to make a fresh assessment, according to law.”

12. The Apex Court in *Malabar Industrial Co. Ltd. Vs. Commissioner of Income-tax*, {(2000) 243 ITR 83 (SC)}, has dealt with the revisional powers under Section 263 in detail. The Apex Court held as follows:-

“A bare reading of this provision makes it clear that the pre-requisite to exercise of jurisdiction by the Commissioner suo moto under it, is that the order of the Income-tax Officer is erroneous insofar as it is prejudicial to the interests 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) it is prejudicial to the interests of the revenue. If one of them is absent - if the order of the Income-tax Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue – recourse cannot be had to Section 263(1) of the Act. 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 interests of the Revenue' is not an expression of art and is not defined in the Act. Understood

in its ordinary meaning it is of wide import and is not conferred (confined) to loss of tax. The High Court of Calcutta in *Dawjee Dadabhoy and Co. v. S. P. Jain*, {31 ITR 872 (Cal)} : (AIR 1957 Cal 244), the High Court of Karnataka in *Commissioner of Income-tax, Mysore v. T. Narayana Pai*, {(1975) 98 ITR 422 (Kar)}, the High Court of Bombay in *Commissioner of Income-tax v. Gabriel India Ltd.*, {(1994 Tax LR 116 (Bom))} and the High Court of Gujarat in *Commissioner of Income-tax v. Smt. Minalben S. Parikh*, {(1995) 215 ITR 81 (Guj)} treated loss of tax as prejudicial to the interests of the revenue.

Mr. Abaraham relied on the judgment of the Division Bench of the High Court of Madras in *Venkatakrishna Rice Company v. Commissioner of Income-tax*, {(1987) 163 ITR 129 (Mad)} interpreting "prejudicial to the interests of the revenue". The High Court held, "In this context, it must be regarded as involving a conception of acts or orders which are subversive of the administration of revenue. There must be some grievous error in the order passed by the Income-tax Officer, which might set a bad trend or pattern for similar assessments, which on a broad reckoning, the Commissioner might think to be prejudicial to the interests of Revenue Administration". In our view this interpretation is too narrow to merit acceptance. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the Income Tax Officer, the revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the revenue.

The phrase 'prejudicial to the interests 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 an order of Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax 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 Income-tax Officer is unsustainable in law. It has been held by this Court that 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 as such will be erroneous and prejudicial to the interests of the revenue. *Rampyari Devi Saraogi v. Commissioner of Income-tax*, {(1968) 67 ITR 84 (SC)} and in *Smt. Tara Devi Aggarwal v. Commissioner of Income-tax*, {(1973) 88 ITR 323 (SC)}."

13. The Apex Court again dealt with the scope of Section 263 in *Commissioner of Income-tax vs. Max India Ltd.* {(2007) 295 ITR 282 (SC)} and held as follows:-

“At this stage we may clarify that under paragraph 10 of the judgement in the case of Malabar Industrial Co. Ltd. Vs. CIT (supra) this court has taken the view that the phrase “prejudicial to the interests of the Revenue” under section 263 has to be read in conjunction with the expression “erroneous” order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of the Revenue. For example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the Revenue, unless the view taken by the Income-tax Officer is unsustainable in law.”

14. The Apex Court in Commissioner of Income Tax vs. Greenworld Corporation, {(2009) 314 ITR 81 SC}, while dealing with Section 263 held as follows:-

“Jurisdiction under Section 263:

The scope of the provisions of section 263 of the Act is no longer res integra. The power to exercise suo motu power of revision in terms of section 263(1) is in the nature of supervisory jurisdiction and same can be exercised only if the circumstances specified therein, viz., (1) the order is erroneous; (2) by virtue of the order being erroneous prejudice has been caused to the interest of the Revenue, exist.”

15. From a reading of the aforesaid judgments, it is apparent that the powers conferred on the Commissioner under Section 263 are very wide. However, two conditions have to be met before the Commissioner can exercise his powers under this section. The order sought to be reviewed should be erroneous and should also be prejudicial to the interest of the revenue. In Malabar Industrial Co. Ltd. Vs. Commissioner of Income-tax (supra), the Apex Court held that both the conditions must be satisfied and if only one of the conditions is satisfied recourse cannot be had to Section 263. It is also apparent that recourse to Section 263 cannot be taken to correct every small error or mistake committed by the Assessing Officer. However, if the order itself is erroneous the provisions of the section would be attracted. The Apex Court has made it clear that even incorrect assumption of facts would satisfy the requirement of order being erroneous. In case the orders are passed without applying the principle of natural justice or without application of mind then also the Commissioner can exercise his revisional powers. It is important to note that the Apex Court in Malabar Industrial Co. Ltd. Vs. Commissioner of Income-tax (supra) further held that the expression prejudicial to the interest of the revenue has very wide connotation and was not confined to loss of tax. If the Assessing Officer adopts one or two courses available under law and it results in loss of revenue then the order cannot be said to be erroneous or prejudicial to the interest of revenue within the meaning of Section 263 but where the view taken by the Income-tax Officer is unsustainable then the order passed by the Assessing Officer is not only erroneous but also

prejudicial to the interest of Revenue.

16. As far as the present cases are concerned, the whole issue is, where did this huge amount of Rs. 39.08 crores came from? The Income Tax Officer issued a detailed notice and a questionnaire but in his order has not decided any of the questions raised by him. His order is totally a non-speaking order and he has not even decided the issue as to from where money came into the hands of the so-called share holders of these shell companies.

17. We are of the considered view that the Commissioner of Income Tax was fully justified in issuing notice under Section 263 of the Act and further directing the Assessing Officer to pass a fresh order after considering the entire material. It is not as if the Appellants before us will not have an opportunity to present their case before the Assessing Officer. The Settlement Commission has clearly held that the manner in which these investments were made in these shell companies leaves many questions unanswered. Truth must be found out. There are certain startling facts which emerge from these cases. During search and seizure operations conducted in the office of Shri Sunil Kumar Agrawal, Chartered Accountant, 232 bank pass books of different individuals were found. All the pass books pertain to only two banks i.e. Union of India, Main Branch, Raipur and Union of India, Pandri Branch, Raipur. There has to be some explanation why all the villagers of Kharora would open bank accounts in Raipur. A number of these companies are having their registered office in the office of Shri Sunil Kumar Agrawal, Chartered Accountant. Therefore, the Commissioner of Income Tax was justified in coming to the conclusion that there was ample material to point out that there may have been benami transactions in the name of individuals of village Kharora to induct share application money/share capital in the 13 shell companies. An enquiry is required to be conducted in this matter and therefore, we are clearly of the view that no question of law arises in these appeals.

18. In view of the above discussions, the appeals are dismissed in *limine*.”

2. The aforesaid judgment squarely covers these cases also. We could have easily disposed of these cases on the basis of the earlier order but now applications for amendment have been filed in these cases, in which another ground has been raised.

3. It would be pertinent to mention that when the tax appeals were filed on 18.10.2016, the grounds raised were identical to the grounds raised in Tax Case No.69 of 2016 and other connected cases. After this Court dismissed those appeals on 25.10.2016, the applications for amendment have been moved on 19.12.2016. It is more than obvious that purpose of moving these amendment

applications is only to circumvent the earlier judgment passed by us. These applications were not moved bonafide. Furthermore, the only point raised in these amendment applications is that reassessment cannot be done since the period of limitation has expired. This ground was never raised before the Income Tax Appellate Tribunal nor in the original writ petition filed before us. However, since it is a legal issue, we have permitted it to be raised and in this judgment we are also dealing with this issue.

4. As is apparent from the judgment quoted above, this is a case of search. As far as present appeals are concerned, some relate to assessment of persons who were noticees and some relate to other persons who were not noticees, in search proceedings.

5. Section 153B of the Income Tax Act deals with limitation in cases relating to search carried out under Section 153A. The relevant portion of Section 153B of the Income Tax Act reads as follows :

“153B. (1) Notwithstanding anything contained in section 153, the Assessing Officer shall make an order of assessment or reassessment,-

- (a) in respect of each assessment year falling within six assessment years referred to in clause (b) of sub-section (1) of section 153A, within a period of two years from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed;
- (b) in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A, within a period of two years from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed :

Provided that in case of other person referred to in section 153C, the period of limitation for making the assessment or reassessment shall be the period as referred to in clause (a) or clause (b) of this sub-section or one year from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later:

Provided further that in the case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on or after the 1st day of April, 2004 but before the 1st day of April, 2010,-

- (i) the provisions of clause (a) or clause (b) of this sub-section shall have effect as if for the words "two years" the words "twenty-one months" had been substituted;

the period of limitation for making the assessment or reassessment in case of other person referred to in section 153C, shall be the period of twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed or nine months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later.”

The first part deals with the persons against whom search has been made and the assessment has to be completed within two years from the end of the assessment year in which the search was carried out. As far as other persons to whom notices were issued is concerned, their assessment had to be completed within a period of 21 months from the end of the assessment year in which the search was carried out. The search was carried out on 4.2.2010. The assessment year ended on 31.3.2010 and 21 months period expired on 31.12.2011. In the present cases, the assessment were made on 30.12.2011 and it is not disputed that these assessments were within time.

6. Thereafter, the Commissioner, Income Tax reopened the matter under Section 263 of the Income Tax Act invoking his revisionary powers. The order was passed by the Commissioner, Income Tax on 28.3.2014. The submission of the Learned Counsel for the Appellant is that since by this time, the period for making assessment is over therefore, no fresh assessment can actually be done because it is beyond the period of limitation.

7. It may be pertinent to point out that Section 153B or 153C of the Income Tax Act do not deal with limitation in case the Commissioner exercises his *suo motu* powers under Section 263 of the Income Tax Act. The only provision in this regard is Section 153(2A), relevant portion of which reads as follows :

“(2A) Notwithstanding anything contained in sub- sections (1), (1A), (1B) and (2), in relation to the assessment year commencing on the 1st day of April, 1971, and any subsequent assessment year, an order of fresh assessment in pursuance of an order under section 250 or section 254 or section 263 or section 264, setting aside or cancelling an assessment, may be made at any time before the expiry of one year from the end of the financial year in which the order under section 250 or section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the

case may be, the order under section 263 or section 264 is passed by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner :

Provided that where the order under section 250 or section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, on or after the 1st day of April, 1999 but before the 1st day of April, 2000, such as order of fresh assessment may be made at any time up to the 31st day of March, 2002 :.”

8. The contention of the learned counsel for the appellants is that Section 153(2A) only finds place in Section 153A and since 153B and 153C start with non-obstante clause, benefit of Section 2A cannot be availed of to extend the limitation in cases where the Commissioner exercises powers under Section 263 where the assessment is pursuant to search operations carried out in terms of Section 153A of the Income Tax Act.

9. We are not at all in agreement with the submission of Learned Counsel for the Appellant. Non-obstante clause of Section 153B and 153C of the Income Tax deals mainly with the extending the period for which the Income Tax Act can carry out the assessment and reassessment under Section 147 of the Income Tax Act. Reassessment can only be done within a period of four years but where the search is carried out, reassessment can be done within a period of six years.

10. No doubt Sections 153B and 153C of the Income Tax Act lay down different time limitations for making the assessment but these time limits are for making initial assessments by the Assessing Officer pursuant to the search and seizure operations. Once those assessments are made if the powers under Section 263 of the Income Tax Act are invoked by the Commissioner then we will have to fall back on the provisions of Section 153(2)A of the Income Tax Act which provides that when the Commissioner invokes the powers under Section 263 of the Income Tax Act then the fresh assessment order in terms of the Commissioner has to be passed within a period of one year from the date of communication of the order.

11. It has been strenuously argued before us that because there is non-obstinate clause for limitation given in case of search and seizure i.e. 153B and 153C of the Income Tax Act, the final limitation cannot be extended. We are not at all in agreement with this submission made by Learned Counsel for the Appellant. If the argument of Learned Counsel for the Appellant is accepted, it would virtually amount to deleting Section 263 in cases of reassessment on the basis of search and seizure. The Commissioner would not be able exercise his *suo moto* powers under Section 263 of the Income Tax Act because by that time the period of limitation would be over. When an order is passed under Section 263 of the Income Tax Act it is a fresh order and limitation has to be reckoned from the date of that order. The Income Tax Act does not specifically deal with Section 263 of the Income Tax Act in respect of search and seizure cases and rightly so. Revisionary powers can be exercised by the Commissioner in all cases where assessment is made and once he exercises his revisionary powers then the provisions of Section 153(2A) of the Income Tax Act will be applicable and the limitation will be one year from the date of the order being passed by the Commissioner in revision petition.

12. In our considered view, limitation given in Section 153(2A) of the Income Tax Act will apply in all cases of fresh assessment made pursuant to orders passed under Section 263 of the Income Tax Act. It is immaterial whether the Commissioner has exercised his revisionary jurisdiction in search or seizure cases or has merely reopened old assessments.

13. In view of the above, we find no merit in the appeals. They are dismissed accordingly.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay Agrawal)
JUDGE