

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD " A " BENCH – AHMEDABAD

**Before Shri R.P. Tolani, JM & Shri Manish Borad, AM.**

ITA No. 1252/Ahd/2016  
Asst. Year: 2011-12

Adani Gas Ltd., Adani House, Nr. Mithakhali Circle, Navrangpura, Ahmedabad.	Vs.	Pr. CIT-1, Ahmedabad.
Appellant		Respondent
PAN AAFCA 3788P		

Appellant by	Shri S. N. Soparkar, AR
Respondent by	Shri R. I. Patel, CIT, DR

Date of hearing: 11.11.2016  
Date of pronouncement: 02/12/2016

**O R D E R**

**PER Manish Borad, Accountant Member.**

This appeal by the assessee for Asst. Year 2011-12 is directed against the order of Id. Pr.CIT-1, Ahmedabad, dated 22/03/2016 arising out of order u/s 143(3) of the IT Act, 1961 (in short the Act) framed on 30.03.2014 by DCIT, Circle-1(1)(1), Ahmedabad.

2. Assessee has raised following grounds of appeal :-

1. In law and in the facts and circumstances of the appellant's case, the impugned order passed by the learned Pr. CIT u/s. 263 of the Income-tax Act, 1961 is void and deserves to be cancelled, inter alia, for the

reason that it has been passed without jurisdiction as the original assessment order which it sought to revise was neither erroneous nor prejudicial to the interests of the Revenue. The learned Pr. CIT ought to have appreciated, inter alia,

(a) that it being the admitted position that the appellant had neither claimed nor had it been allowed any depreciation on Goodwill in Assessment years 2007-08, 2008-09 and 2009-10, its claim for depreciation in the present assessment year on the basis of written down value arrived at after considering depreciation for A.Y. 2010-11 (which was the first year in which it had claimed depreciation on Goodwill) alone had been correctly allowed in the original assessment order considering that as per the definition of the expression "written down value" contained in clause (G) of Section 43 only such depreciation as had been actually allowed to an assessee was required to be reduced; that, therefore, the assessment order was not erroneous as assumed by the learned Pr. CIT;

(b) that his proposal for grant of depreciation on Goodwill this year on the basis of lower written down value after reducing notional depreciation for A.Y. 2007-08, 2008-09 and 2009-10 was bound to entail the Department having to actually grant deduction for depreciation to the appellant in the said A.Y. 2007-08, 2008-09 and 2009-10 with a consequential reduction in the appellant's total income of those far off years with corresponding increase in the total income of the present assessment year which cannot be in the interests of the Revenue; that further, since under the scheme of the Income-tax Act, 1961, aggregate deduction for depreciation cannot exceed the cost of the asset and also considering the provision of Section 32(2) for carry forward of unabsorbed depreciation, even if for the sake of argument only it were assumed that the rationale behind the learned Pr. CIT's action had any basis for regarding the assessment order as erroneous, it cannot, in any case, be regarded as prejudicial to the interests of the Revenue.

2. Without prejudice to the foregoing, in law and in the facts and circumstances of the appellant's case, the learned Pr. CIT has grossly erred in ordering for the cancellation of the original assessment order instead of merely issuing a direction limited to reconsidering only the appellant's claim for depreciation on Goodwill as made and allowed in the original assessment.

3. The appellant craves leave to add, amend and/or alter the ground or grounds of appeal either before or at the time of hearing of the appeal.

3. Briefly stated facts of the case are that the assessee is a limited company engaged in the business of trading & transportation of Natural Gas & Manufacturing of compressed Natural Gas (CNG). Return of income was filed on 19.9.2011 declaring total income of Rs.37.56 crores followed by revised return filed on 25.09.2012 declaring total income at Rs.26.82 crores. The case was selected for scrutiny assessment. Order u/s 143(3) of the Act was framed on 30.3.2014 assessing the income at Rs.27,33 crores. Thereafter Principal CIT-1, Ahmedabad invoked the powers u/s 263 of the Act and issued notice dated 7.3.2016 stating that the assessment order u/s 143(3) of the Act is erroneous and prejudicial to the interest of revenue with regard to excess depreciation claimed on goodwill. In reply to the notice assessee submitted that the issue of claiming depreciation on goodwill was well taken up by Id. Assessing Officer during assessment proceedings and all the details relating thereto were furnished and the claim by assessee was found to be correct by Assessing Officer and there was full application of mind by him as he adopted legally correct view.

4. However, Id. Principal CIT did not agree to the contentions of assessee and cancelled the order u/s 143(3) of the Act and directed to make fresh assessment by observing as follows :-

3. I have considered the facts of the case and the submissions made by the assessee. The Goodwill arose due to the demerger of city gas distribution business of Adani Energy Ltd. demerged in Adani Gas Ltd. (UP) Pvt. Ltd., and the resultant company i.e. Adani Gas Ltd. paid consideration to the demerged company and the difference (Rs.33,98,9-0,680/-) between

the cost of assets and the amount paid constituted Goodwill. The High Court ordered appointed date as 1<sup>st</sup> January, 2007 which meant that scheme was effective from appointed date, depreciation on Goodwill was required to be allowed from A.Y.2007-08 relevant to previous year 2006-07. However, the assessee claimed depreciation from A.Y.2010-11 which resulted in excess brought forward of opening WDV of Goodwill in A.Y.2011-12 with consequent excess allowance of depreciation. As depreciation allowable during A.Y.2011-12 was Rs.3,13,66,865/-, however, the assessee claimed and was allowed depreciation of Rs.7,43,51,086/- on Goodwill, which resulted into excess allowance of depreciation of Rs.4,29,84,221/-. Apparently, the AO has failed to apply the provisions of the Act correctly and without appreciating full facts of the case. He has also failed to examine and verify the claim of the assessee in the course of assessment proceedings. Lack of necessary enquiries and verification of facts properly in itself is sufficient to hold that the assessment order is not only erroneous but also prejudicial to the interests of the Revenue and in the light of amended provisions of section 263, the assessment order is liable to be cancelled/set-aside. . . . ' ;

4. Accordingly, it is held that the assessment order passed u/s 143(3) of the Act dated 30.03.2014 was erroneous and prejudicial to the interest of revenue. Hence, the said assessment for A.Y.2011-12 is cancelled and the AO is directed to make fresh assessment of the total income of the assessee after taking into consideration the issues discussed above vis-a-vis all the relevant facts of the case for the said assessment year after giving proper opportunity to the assessee as per law. He would make necessary verification and enquiries as deemed fit, before completing the assessment in this case.

5. Aggrieved, assessee is now in appeal before the Tribunal challenging the valieidity of the order of Principal CIT.

6. Ld. AR submitted that in the original return of income filed on 19.9.2011 depreciation was claimed at Rs.54,74,19,888/-. Thereafter the return was revised on 25.09.2012 and the figure of depreciation increased to Rs.62,17,70,974/-. This increase of depreciation was with regard to the claim of depreciation on w.d.v. of the goodwill at Rs.29.74 crores on account of the judgment of Hon. Supreme Court in the case of Smifs Securities Ltd. (2012) 348 ITR 302 (SC)/24 taxmann.com 222 (SC) wherein claim of assessee for depreciation on the goodwill was allowed. Head note of this judgment of Hon. Apex Court reads as under :-

*"Section 32 of the income-tax Act, 1961 - Depredation -Allowance/Rate of Assessment year 2003-04 - Whether 'goodwill' is an asset under Explanation 3(b) to section 32(1) - Held, yes - During relevant assessment year, one 'Y' Ltd. amalgamated with assessee-company - According to assessee, excess consideration paid by it over value of net assets acquired of Y' Ltd. amounted to goodwill on which depreciation was to be allowed -Authorities below recorded a finding that assets and liabilities of T Ltd. were transferred to assessee for a consideration; that difference between cost of an asset and amount paid constituted goodwill and that assessee-company in process of amalgamation had acquired a capital right in form of goodwill because of which market worth of assessee-company stood increased - Accordingly, assessee's claim was allowed - Whether since revenue could not rebut factual findings recorded by authorities below, impugned order passed by them was to be upheld - Held, yes [Para 8] [In favour of assessee]"*

7. On the strength of the judgment of Hon. Supreme Court the assessee revised its return of income on 25.9.2012 and claimed depreciation on the w.d.v. of goodwill as on 1.4.2010. The return was revised after the selection of assessee's case for scrutiny assessment vide notice u/s 143(2) of the Act dt. 1<sup>st</sup> August, 2012.

8. Ld. AR further referred to the notice u/s 142(1) of the Act dated 18/10/2013 placed at page nos.95 to 97 of the paper book in which at sl.no.9 a specific question has been asked by Assessing Officer that "this year, you have amortized goodwill. No such treatment was given last year. Pl. explain the reason for this treatment during the year." In reply to the same assessee submitted letter dated 25.12.2013 filed with the assessing authority on 27<sup>th</sup> December, 2013 placed at page 98 of the paper book with a specific reply on treatment of amortization of goodwill in para 9 of this letter. Further assessee vide its reply dated 1<sup>st</sup> March, 2014 gave complete details about the

calculation of depreciation on the goodwill in para 13 to 15 of this letter dated 1<sup>st</sup> March, 2014. Ld. AR further added that the issue of depreciation of goodwill has been adjudicated by Id. Assessing Officer at length during the course of assessment proceedings and there was full application of mind on his part on this issue and he has adopted legally correct view that depreciation was allowable with regard to the w.d.v. brought forward from preceding year. It was not necessary that all the issues which Id. Assessing Officer dealt with during the course of assessment proceedings find some discussion in the final assessment order u/s 143(3) of the Act. Therefore, Id. Pr.CIT has erred in invoking the jurisdiction u/s 263 of the Act. Ld. AR referred and relied the judgment of Hon. Supreme Court in the case of Malabar Industrial Company Ltd. vs. CIT 243 ITR 83 and also the judgment of Hon. Jurisdictional High Court in the case of Pr.CIT vs. Shree Prakash Bhagchand Khatri in TAX Appeal Nos.177 & 178 of 2016 dated 29.6.2016.

9. On the other hand, Id. DR vehemently argued and supported the order of Id. Pr.CIT.

10. We have heard the rival contentions and perused the record placed before us. Solitary grievance of the assessee is challenging the order u/s 263 of the Act passed by Id. Pr.CIT being erroneous and prejudicial to the interest of Revenue. We observe that the assessee company is a wholly owned subsidiary of Adani Enterprise Ltd. and carrying on the business of City Gas Distribution(CGD). During the year it was decided that the CGD business carried on by M/s Adani

Energy Ltd.(a wholly owned subsidiary of Adani Enterprise Ltd.) be demerged and the same be vested in the company. For this purpose a scheme of arrangement u/s 391 to 394 of the Companies Act, 1956 was prepared and submitted to Hon. Gujarat High Court. The same was approved by Hon. High Court on 19<sup>th</sup> November 2009 and the copy of the same was filed with Registrar of Companies on 10<sup>th</sup> December, 2009, the effective date. The scheme of arrangement provides for transfer with effect from January 1, 2007, being the appointed date, of all the assets and liabilities, the legal proceedings, all the deposits and balances, certain employees and related benefits, all the contracts and agreements in relation to the Gas Distribution business to a distinct identity to Adani Energy (UP) Pvt. Ltd. now known as Adani Gas Ltd. The scheme has accordingly been given effect in books of accounts. Consequently upon giving effect to the scheme an amount of Rs.33.99 crores was paid towards goodwill which is disclosed separately but was not amortized in the current financial year as the economic benefits there from are expected to accrue over a period of time based on the foreseeable life of the business. From the appointed date i.e. 1<sup>st</sup> January, 2007, Adani Energy Ltd. (demerged company) conducted the business of CGD in trust for Adani Gas Ltd. (resulting company) as per the scheme and accordingly balances from the appointed date to the effective date were transferred in the resulting company and the figures in the previous year relevant to the asst. year 2010-11 were regrouped/readjusted.

11. We observe that Id. Pr. CIT invoked his powers u/s 263 by issuing notice dated 7.3.2016 stating following facts :-

*"Scrutiny of the assessment records revealed that the assessee while filing original return did not claim depreciation on 'Goodwill', therefore, it file revised return and claimed depreciation of Rs.7,43,51,086/- on WDV of Rs.29,74,04,345/-. It was further noticed that the Goodwill arose due to the demerger of city gas distribution business of Adani Energy Ltd. demerged in Adani Gas Ltd. (UP) Pvt. Ltd. As a result of demerger, the resultant company i.e. Adani Gas Ltd. paid consideration to the demerged company and the difference (Rs.33,98,90,680/-) between the cost of assets and the amount paid constituted Goodwill. The assessee started claiming depreciation on Goodwill amounting to Rs.33,98,90,680/- from A.Y.2010-11 (1/2 of 25%) and opening WDV in A.Y.2011-12 was worked out to Rs.29,74,04,345/-. However, as the High Court ordered appointed dated as 1<sup>st</sup> January, 2007 which means that scheme was effective from appointed date, depreciation on Goodwill was required to be allowed from A.Y.2007-08 relevant to previous year 2006-07. However, the assessee claimed depreciation from A. Y.2010-11 which resulted in excess brought forward of opening WDV of Goodwill in A.Y.2011-12 with consequent excess allowance of depreciation. As depreciation allowable during A.Y.2011-12 was Rs.3,13,66,865/-, however, the assessee claimed and was allowed depreciation of Rs. 7,43,51,086/- on Goodwill, it resulted into excess allowance of depreciation of Rs.4,29,84,221/-."*

From the above mentioned show cause notice we observe that Id. Pr. CIT was of the view that pursuant to the demerger by Hon. Jurisdictional High Court the appointed date was 1.1.2007. Depreciation on goodwill was required to be allowed from Asst. Year 2007-08 whereas assessee started claiming depreciation from Asst. Year 2010-11 which resulted in excess brought forward of opening wdv of goodwill in Asst. Year 2010-11 with consequent excess allowance of depreciation.

12. The main contention of the assessee through this appeal is the validity of the order u/s 263 of the Act. We find that Explanation-2 to section 263 contemplates that an order passed by Assessing Officer



shall be deemed to be erroneous in so far as it is prejudicial to the interests of revenue if in the opinion of Pr.CIT/Commissioner -

*(a) the order is passed without making inquiries or verification which should have been made;*

*(b) the order is passed allowing any relief without inquiring into the claim; .*

*(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section, or*

*(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.*

13. We find that clause (a) of Explanation-2 to section 263 is relevant to be dealt with in the given facts of the case which reads as to whether the order passed by assessing authority is without making any enquiry or verification relating to assessee's claim of depreciation on goodwill. Ld. AR has submitted at length that the issue of claim of depreciation on goodwill has been exhaustively dealt during the course of assessment proceedings. In the course of examination of the facts narrated by the Id. AR we observe that following events took place :-

*a) Original return of income was filed on 19.9.2011 claiming depreciation at Rs.54.74 crores.*

*b) Revised return of income was filed on 25.9.2012 claiming depreciation of Rs.62.18 crores which included depreciation of Rs.7,43,51,086/- claimed @ 25% on the wdv of goodwill of Rs.29.74 crores.*

- c) *Case was selected for scrutiny assessment and notice u/s 143(2) of the Act was issued on 1.8.2012 followed by notice u/s 142(1) of the Act with questionnaire on 10.10.2012. Detailed questionnaire was issued on 18/1-/2013 having 23 questions and at question no.9 Id. Assessing Officer has asked "that this year you have amortized goodwill. No such treatment was given last year. Please explain the reasons given in this year."*
- d) *Reply dated 25.10.2013 was submitted before DCIT, Circle-1, on 27.12.2013 and the relevant portion of para 9 states as below:-*

9. Your good self has asked for the reason for treatment of amortization of goodwill as no such treatment was given in the last year. At the outset, we would like to bring to the notice of your honour that during the year under 2009-10 the city gas distribution business of Adani Energy Limited was demerged in Adani Energy (UP) Pvt. Ltd and there after name of Adani Energy (UP) Pvt. Ltd. was changed to Adani Gas Limited. The order under section 394 of the Companies Act 1956 was passed by the Hon'ble Gujarat High Court on 9<sup>th</sup> December, 2009 while appointed date of order was 1<sup>st</sup> January, 2007. As result of the demerger the resultant company i.e. Adani Gas Ltd paid consideration to the demerged company and the difference between the cost of assets and the amount paid constituted goodwill and that the assessee-company in the process of demerger had acquired a capital right in the form of goodwill.

As per the recent decision of the Hon'ble Supreme court in the case of Commissioner of Income-tax, Kolkata v. Smifs Securities Ltd. [2012] 24 taxmann.com 222 (SC) it was held as under-

*I. Section 32 of the Income-tax Act, 1961 - Depreciation - Allowance/Rate of - Assessment year 2003-04 - Whether 'goodwill' is an asset under Explanation 3(b) to section 32(1) - Held, yes - During relevant assessment year, one 'V Ltd. amalgamated with assessee-company - According to assessee, excess consideration paid by it over value of net assets acquired of 'Y' ltd. amounted to goodwill on which depreciation was to be allowed -Authorities below recorded a finding that assets and liabilities of 'Y' Ltd. were transferred to assessee for a consideration; that difference between cost of an asset and amount paid constituted goodwill and that assessee-company in process of amalgamation had acquired a capital right inform of goodwill because*

*of which -market worth of assessee-company stood increased - Accordingly, assessee's claim was allowed - Whether since revenue, could not rebut factual findings recorded by authorities below, impugned order passed by them was to be upheld - Held, yes [Para 8] [In favour of assessee]*

*II. Section 32 of the Income-tax Act, 1961 - Depreciation - Allowance/Rate of - Whether stock exchange membership card is an asset eligible for depreciation under section 32 - Held, yes [Para 1] [In favour of assessee]*

In view of the above decision, it has to be held that goodwill is an asset within the meaning of section 32 and depreciation on 'goodwill'<sup>1</sup> is allowable under section 32 of the IT Act. Based on the above decision of the Apex court the assessee company has claimed depreciation on goodwill for A.Y. 2011-12 by way of filing the revised return of income.

- e) The reply of assessee dated 1.3.2014 in the assessment proceedings for Asst. Year 2011-12 on various points, specifically with regard to calculation of depreciation on goodwill as desired by Id. Assessing Officer assessee has stated as follows :-

3. Your good self has asked the assessee company to provide reason for difference between intangible assets as per Audit Report and as per Revised Return. In this regard, we would like to submit that the difference is on account of intangible asset being Goodwill. Your good self will observe that gross block of goodwill appears at Rs.33.99 Crore in Schedule 5 of Audited Financial Statements. As per revised return of income, opening W.D.V. is shown at Rs.29.74 Crore. As stated in point no.15 below, goodwill V pertains to AY 2010-11 in the block of additions after September i.e. eligible for depreciation at half rate. Accordingly, opening WDV is shown after reducing depreciation for AY 2010-11 at the rate of 12.50% (half of 25%). The same is reproduced below in summarised manner for your ready reference.

Particulars	Amount Rs.
Gross block of Goodwill appearing in Audited Financial Statements	33,98,90,680
Depreciation for AY 2010-11 (@ half of 25%)	4,24,86,335

Opening WDV of Intangible Assets for AY 2011-12	29,74,04,345
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14. (a) Your good self has sought details of Fixed Asset serial No. 605 alongwith explanation as to why the same is eligible to claim depreciation under the block of assets "Furniture & Fixtures". In this regard, we would like to submit herewith details of Fixed Asset serial No. 605 i.e. Canopy. The assessee company is engaged in the business of trading and transportation of natural gas & manufacturing of Compressed Natural Gas (CNG). At CNG ^ stations built up by the assessee company, canopy is used as a roof. The assessee company has therefore considered the same as Furniture & fixtures and claimed depreciation @ 10% on actual cost.

(b) Your good self has sought proof of service tax reversal. In this regard, we would like to submit that the assessee company has already submitted posting entries alongwith narration vide point 5 of earlier submission dated 25<sup>th</sup> December, 2013.

(c) Your good self has asked the assessee company to submit proof of asset no. 474 i.e. DRS (District Regulating Station) at Vadaj area in Ahmedabad. The said asset includes capital expenditure relating to permission and licences expenses for laying pipeline in vadaj area, DRS cost, pipeline laying and commissioning of gas connection to industrial, commercial and residential customers of Vadaj area, expenditure during construction period and interest allocation. As data runs into number of pages, we are submitting herewith the same in soft copy vide Annexure-8.

15. Your good self has sought explanation on allowability of depreciation on -goodwill alongwith reason why the entry of the same has been passed during the year under consideration. At the outset, we would like to submit that it is evident from schedule 5 of the Audited Financial Statements that goodwill is appearing as opening balance in the balance sheet and further no addition on account of goodwill was made during the year under consideration. We would like to bring to the notice of your honour that during the Assessment Year 2010-11 the city gas distribution business of Adani Energy Limited was demerged in Adani Energy (UP) Pvt. Ltd and there after name of Adani Energy (UP) Pvt. Ltd. was changed to Adani Gas Limited. The order under section 394 of the Companies Act 1956 was passed by the Hon'ble Gujarat High Court on 9<sup>th</sup> December, 2009 while appointed date of order was 1<sup>st</sup> January, 2007. As result of the demerger the resultant company i.e.

Adani Gas Ltd paid consideration to the demerged company and the difference between the cost of assets and the amount paid constituted goodwill and that the assessee-company in the process of demerger had acquired a capital right in the form of goodwill. The assessee company has claimed depreciation on goodwill by way of revising return of income on 25 September, 2012 based upon judgement of apex court in case of Smifs Securities Ltd [2012] 348 ITR 302 (SC)/24 taxmann.com 222 (SC). Head **note** of the same read as under:

*"Section 32 of the Income-tax Act, 1961 - Depreciation - Allowance/Rate of -Assessment year 2003-04 - Whether 'goodwill' is an asset under Explanation 3(b) to section 32(1) ~ Held, yes - During relevant assessment year, one 'Y' Ltd. amalgamated with assessee-company - According to assessee, excess consideration paid by it over value of net assets acquired of 'Y' ltd. amounted to goodwill on which depreciation was to be allowed -Authorities below recorded a finding that assets and liabilities of 'Y' Ltd. were transferred to assessee for a consideration; that difference between cost of an asset and amount paid constituted goodwill and that assessee-company in process of amalgamation had acquired a capital right in form of goodwill because of which market worth of assessee-company stood increased - Accordingly, assessee's claim was allowed - Whether since revenue could not rebut factual findings recorded by authorities below, impugned order passed by them was to be upheld - Held, yes [Para 8] [In favour of assessee]"*

In view of stated. facts and case law, claim of depreciation on goodwill should be allowed.

f) Assessment order u/s 143(3) was passed on 30<sup>th</sup> March, 2014.

14. From going through the above series of events from point (a) to (f) para-13 above starting from filing of return till completion of assessment proceedings u/s 143(3) of the Act, we observe that assessee on the strength of the judgment of Hon. Apex Court in the case of CIT vs. Smifs Securities Ltd. (supra), revised its return of income by claiming depreciation on the Written Down Value (WDV) of goodwill paid towards acquiring C.G.D. business. Ld. Assessing Officer raised necessary queries for this claim as it was not made at

the time of filing of original return, to which assessee gave detailed reply with necessary evidence. We also observe that the only point of litigation between the view taken by Assessing Officer and that of Pr. CIT was that Id. Assessing Officer allowed assessee's claim of depreciation on goodwill on the WDV calculated by notionally allowing depreciation for Asst. Year 2010-11 because scheme of demerger was approved by Hon. Jurisdictional High Court on 19<sup>th</sup> November, 2009 whereas Pr. CIT was of the view that the scheme of arrangement for transfer of assets was w.e.f. 1.1.2007 and, therefore, WDV of goodwill as on 1.4.2011 should have been calculated after deducting notional depreciation for Asst. Year 2007-08 to Asst. Year 2010-11 which has resulted in excess brought forward of opening WDV of goodwill for Asst. Year 2011-12. We find that assessee has been filing returns for last many years and even if for the sake of argument if the view of Id. Pr. CIT had been adopted then the assessee would have been able to claim depreciation in earlier years and at the place of higher WDV there would have been brought forward loss or the income of previous Asst. Years from 2007-08 to 2010-11 would have been reduced by the increased depreciation but in any situation it would not have affected the Revenue adversely. We, therefore, find that after having extensive communication on this aspect of claiming depreciation on goodwill. Id. Assessing Officer applied his mind and accepted one of the legally possible views which was adopted up by assessee and certainly one cannot say that the Assessing Officer passed the order without making enquiries or verification.

15. At this juncture we find it relevant to cite the following ratio of Hon. Supreme Court in the case of Malabar Industrial Company Ltd. vs. CIT (supra) which in our view squarely applicable to the facts of assessee's case:-

*"A bare reading of section 263 of the Income-tax Act, 1961, makes it clear that the prerequisite for the exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the Income-tax Officer is erroneous in so far 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. 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."*

16. Further in order to appreciate the contentions of Id. AR that it is not mandatory for the assessing authority to discuss all the issues dealt during the course of assessment proceedings in his assessment order the matter was dealt by Hon. Jurisdictional High Court in the case of Pr. CIT vs. Shri Prakash Bhagchand Khatri (supra) wherein Hon. High Court upheld the decision of the Tribunal quashing the order u/s 263 of the Act by observing as follows :-

6. It can thus be seen that though final order assessment was silent on this aspect, the Assessing Office had carried out inquiries about the nature of sale of land and about the validity of the assessee's claim of deduction under section 54F of the Act. Learned counsel for the Revenue however submitted that these inquiries were confined to the claim of deduction under section 54F of the Act in the context of fulfilling

conditions contained therein and may possibly have no relevance to the question whether the sale of land gave rise to a long term capital gain. Looking to the tenor of queries by the Assessing Office and details supplied by the assessee, we are unable to accept such a condition. In that view of the matter, the observation of the Tribunal that the Assessing Officer having made inquiries and when two views are possible, revisional powers could not be exercised, called for no interference. Since with respect to computation and assertions of other aspects of deduction under section 54F of the Act, the Tribunal has remanded the proceedings, nothing stated in this order would affect either side in considerations of such claim.

17. Respectfully following the judgment of Hon. Supreme Court in the case of Malabar Industrial Co. vs. CIT (supra) and that of Jurisdictional High Court in the case of Pr. CIT vs. Shri Prakash Bhagchand Khatri (supra) and appreciating the facts of the case with series of events which took place during the course of assessment proceedings as discussed above we are of the view that as the Id. Assessing Officer has accepted the assessee's claim of depreciation on goodwill on the reduced w.d.v. as on 1/4/2010 after making enquiries, proper verification and application of mind and therefore, Id. Pr. CIT has wrongly assumed the jurisdiction u/s 263 of the Act and the same is uncalled for and unwarranted and deserves to be quashed. We accordingly set aside the order of Id. Pr. CIT passed u/s 263 of the Act and restore that of the Assessing Officer passed u/s 143(3) of the Act dated 30.3.2014. This ground of the assessee is allowed.

21. Other grounds are of general nature which need no adjudication.



22. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on 2<sup>nd</sup> December, 2016

Sd/-  
(R.P. Tolani)  
Judicial Member

sd/-  
(Manish Borad)  
Accountant Member

Dated 02/12/2016

Mahata/-

Copy of the order forwarded to:

1.	The Appellant
2.	The Respondent
3.	The CIT concerned
4.	The CIT(A) concerned
5.	The DR, ITAT, Ahmedabad
6.	Guard File

BY ORDER

Asst. Registrar, ITAT, Ahmedabad

1. Date of dictation: 29/11/2016
2. Date on which the typed draft is placed before the Dictating Member: 1/12/2016 other Member:
3. Date on which approved draft comes to the Sr. P. S./P.S.:
4. Date on which the fair order is placed before the Dictating Member for pronouncement: \_\_\_\_\_
5. Date on which the fair order comes back to the Sr. P.S./P.S.:
6. Date on which the file goes to the Bench Clerk: 02/12/16
7. Date on which the file goes to the Head Clerk:
8. The date on which the file goes to the Assistant Registrar for signature on the order:
9. Date of Despatch of the Order: